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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 331.

JOTHAM SHEPHERD, SAMUEL E. SHEPHERD, RANDALL E. JONES, AND OLIVER P. SHEPHERD, APPELLANTS,

vs.

THE SCHOONER CLARA, HER TACKLE, &c., LEMUEL H. HOPKINS, ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 24, 1877.

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1 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 13th day of March, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Charles L. Benedict, district judge.

JOTHAM SHEPHERD, SAMUEL E. SHEPHERD, Randall E. Jones, and Oliver P. Shepherd,
vs.
THE SCHOONER CLARA, HER TACKLE, &C.

The above libellants appear and file their libel against the above named schooner in the words and figures following, to wit:

District court of the United States for the eastern district of New York.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel of Jotham Shepherd, Samuel E. Shepherd, and Randall E. Jones, copartners, trading under the name and firm of Shepherd, Jones & Co., and Oliver P. Shepherd, all of Camden, in the State of Maine, owners of the schooner Julia Newell, whereof Frank P. Shepherd, late was master, on behalf of themselves and the owner or owners of the cargo of said schooner, against the schooner Clara, of New York, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision civil and maritime, alleges as follows:

2 First. That on the twenty-fifth day of February, 1874, said schooner Julia Newell was lying at anchor in the Delaware Breakwater, at the entrance of the Delaware Bay, having gone there to seek shelter from a coming storm; that said schooner was laden with a cargo of about five thousand two hundred and sixty bushels of corn, and was on a voyage from Newcastle, in the State of Delaware, to Hyannis, in the State of Massachusetts; that at about five o'clock in the morning of said February 25th, said schooner Julia Newell, while lying at anchor as aforesaid, was run into by said schooner Clara, and was rendered a total loss by said collision as is more particularly set forth below; that said schooner Julia Newell was at the time tight, staunch, and strong, that she had the signal light required by law set and burning brightly, and that she had a competent officer in charge of the deck who was acting as watch at the time of and before the collision.

Second. That the weather at the time of the collision was somewhat cloudy, a few spits of snow having fallen just as the collision occurred, but the morning was not so dark but that vessels could be seen for a very great distance; the wind was northeast blowing a very strong breeze, and the Julia Newell was standing about north-northeast, and said schooner Clara was first seenover the port bow of the Julia Newell; the Clara was coming into the breakwater for the purpose of anchoring, and it is evident that she had no lookout, or the Julia Newell would have been seen and the collision avoided; that the bow of the Clara struck the Julia Newell on the port bow a little aft the cat head, doing the damage set forth in the next article hereof.

Third. That by said collision five of the port-bow planks of the Julia Newell were cut through, the fore-rigging was carried away, the

3 fore-mast sprung, the bulwarks stove in, and the whole vessel terribly strained, and she was caused to leak so badly that in half an hour after the collision she was filled with water and sunk to the bottom with the cargo on board.

That the schooner has at great expense been raised, and with the damaged cargo towed to the port of Philadelphia, and that the cost of raising said vessel and repairing the same, including the time lost in making the repairs, will nearly or quite equal the value of the said schooner, so that the libellants have suffered the loss of said vessel, provisions on board, implements of navigation, and the freight for said voyage.

Fourth. That said schooner was of the burden of tons, and was of the value of about five thousand dollars; said provisions on board and implements of navigation were of the value of about three hundred dollars; the value of the freight then pending was about four hundred and twenty dollars; that the value of the cargo then laden on board said schooner was about four thousand dollars, amounting in all to the sum of nine thousand seven hundred and twenty dollars.

Fifth. That said loss and damage was occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said schooner Clara, and not by or through any fault, negligence, or improper conduct on the part of the persons on board the schooner Julia Newell, her master, and crew.

Sixth. That said schooner Clara is now lying in the port of New York, and within the jurisdiction of this court.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law,
4 according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said schooner Clara, her tackle, apparel, and furniture, and that all persons having an interest therein may be cited to appear and answer on oath all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages and loss as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

TOWNSEND SCUDDER,
Attorney in fact for Libellants.

Subscribed and sworn before me this 12th day of March, 1874.
EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Libel. Filed March 13th, 1874.

District court of the United States for the eastern district of New York.
In admiralty.

Stipulation for value, entered into pursuant to the rules and practice of this court. Filed the 20th day of March, 1874.

Whereas a libel was filed on the twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-four, by Jotham Shepherd, Samuel E. Shepherd, Randall E. Jones, and Oliver P. Shepherd, against the schooner Clara, her tackle, apparel, and furniture, for

the reasons and causes in the said libel mentioned; and whereas the said schooner is in the custody of the marshal under the process issued in pursuance of the prayer of said libel; and whereas a claim to said vessel has been filed by Lemuel H. Hopkins, one of the owners, on behalf of himself and other owners; and whereas by an order of this court heretofore made, an appraiser was appointed to appraise the value of said schooner, her tackle, &c., and said appraiser having reported the value of said schooner, her tackle, &c., to be the sum of seventy-five hundred dollars, as appears from said report now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their surety, execution for the above agreed value, with interest thereon from this date, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned, shall at any time, upon the interlocutory or final order or decree of the said district court or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen & Gray, esquires, proctors for the claimants of said schooner, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

L. H. HOPKINS.
S. C. EVANS.
EDWIN R. KIRK.

Taken and acknowledged this 16th day of March, 1874, before me, as to Hopkins and Kirk, and this 17th day of March, as to Evans.

EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edwin R. Kirk, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of fifteen thousand dollars, over and above all his just debts and liabilities.

EDWIN R. KIRK.

Sworn to this 16th day of March, 1874, before me,

EDWARD L. OWEN,
U. S. Commissioner.

6 Recorded this 26th day of March, 1874.

Bond approved both as to form, sufficiency, and amount.
M'ch 17th, 1874.

SCUDDER & CARTER,
Proc's for Lib't.

(Endorsed:) Stipulation for value.

To the honorable Charles L. Benedict, judge of the district court of the United States within and for the eastern district of New York:

The answer of Lemuel H. Hopkins, Silas C. Evans, John R. Inman, Samuel S. Thorp, Frederick Muthan, Thomas R. Fort, Sarah J. Fort, Augustus M. Cox, G. Kohn, Garret Lippencott, owners of the schooner Clara, to the libel and complaint of Jotham Shepherd, Samuel E. Shepherd, Randall E. Jones, and Oliver P. Shepherd, owners of the schooner Julia Newell, on behalf of themselves and the owner or owners of the

cargo of said schooner, against the said schooner Clara, her tackle, apparel and furniture, and all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges and articulately propounds as follows:

First. These claimants deny the several allegations of the first article of the libel, except that they admit a collision did occur between the schooner Julia Newell and Clara, at or about the time and place therein stated, but under the circumstances hereinafter set forth.

Second. They deny the allegations of the second article of the libel, except that they admit that at the time of the collision the weather was cloudy and snowing, that the wind was about northeast, blowing a strong breeze, that the Clara was coming into the breakwater for the purpose of anchoring, and that she struck the Julia Newell on her port bow.

7 Third. They have no knowledge of the matters alleged in the third and fourth articles of the libel, and therefore deny the same.

Fourth. They deny the several allegations contained in the fifth article of the libel.

Fifth. They admit that at the time of the commencement of this action the schooner Clara was lying in the port of New York, and within the jurisdiction of this court.

Sixth. These claimants say that on the 24th of February, 1874, the schooner Clara, being light, set sail from New York bound on a voyage from thence to Baltimore, Maryland; that she was light, staunch, strong and well officered, manned, and equipped, and in every respect seaworthy. That while proceeding on her aforesaid voyage there was every indication of a violent storm approaching, and to avoid the danger of the storm, when she had reached a point on the coast about off the Capes of Delaware, her course was changed, and she bore away for the Delaware Breakwater to seek shelter from the impending storm.

That upon entering the breakwater she had her mainsail, foresail, and two jibs set, and had a competent lookout properly stationed and faithfully attending to his duties, and had all her lights set and burning brightly; that the night was cloudy and dark, and it was snowing, the storm having already commenced, which ultimately proved of great severity; that the lights of vessels lying at anchor in the breakwater were discovered off the Clara's port side, there being none ahead or off her starboard side.

That the Clara continued on her course into the breakwater, when suddenly and unexpectedly the mast of a vessel lying at anchor, which subsequently proved to be the Julia Newell, was discovered by the lookout on the Clara directly ahead, and distant not more than fifty feet; that thereupon the order was given to put the wheel of the Clara

8 hard to port, which was a proper movement, but before the same could be done the Clara collided with the Julia Newell, striking her on her port bow. That at the time above mentioned, the Julia Newell was improperly lying at anchor without any anchor watch, and without a signal light, as required by law, and for that reason she was not and could not have been discovered sooner than she was, or in time to avoid the collision; that she was seen as soon as it was possible, and that thereupon and immediately everything was done on the Clara to avoid the collision; and the claimants therefore insist that, so far as respects the acts or doings of the Clara or those navigating and having charge

of her movements, the collision was inevitable and without any fault on her part.

Seventh. That the Clara did not, by any fault or negligence on her part, cause or tend to cause the said collision, but that the same occurred solely by reason of the fault and negligence on the part of those having charge of the Julia Newell.

Eighth. In verification whereof, if denied, these claimants pray leave to refer to the depositions and proofs to be produced on the trial hereof.

Wherefore they pray that they may be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

GARRET LIPPINCOTT.

Subscribed and sworn to before me this 22d day of May, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

OWEN & GRAY,
Proctors for Claimants.
E. H. OWEN,
Advocate.

(Endorsed:) Answer. Filed May 22d, 1874.

United States district court, eastern district of New York.

JOTHAM SHEPHERD ET AL.
vs.
THE SCHOONER CLARC, &C.

NOVEMBER 27TH, 1874.

Before Hon. C. L. Benedict, J.
Cause called; both sides answer ready. Hearing ordered.
Appearances: Mr. Black for libellants, Mr. E. L. Owen for claimants.
Pleadings read.

EVIDENCE FOR CLAIMANTS.

GERRIT LIPPINCOTT, being called and sworn, testified as follows:

Q. What is your business?
A. Coasting. I am a seafaring man.
Q. How long have you followed the sea?
A. Between 22 and 23 years.
Q. What vessel are you master of now?
A. The schooner Clara.
Q. What vessel were you master of in February, 1874?
A. The schooner Clara, of New York.
Q. Do you remember of the collision between the schooner Clara and the Julia Newell?
A. I do, sir.
Q. On what voyage were you bound at the time of this collision?
A. I was bound on the voyage from New York to Baltimore.
Q. Did you have a cargo?
A. No, sir; I was light.
Q. Where did this collision happen?
A. This collision happened in the Delaware Breakwater.
Q. How was it, captain, that you went into the Delaware Breakwater?

A. Well, sir, I sailed from New York on the 24th, in the morning, and proceeded on my passage, and when off the Capes of Delaware, the weather looking threatening and the wind from the eastward, I thought it best to make a harbor, and consequently at 2 o'clock on the morning of the 25th I bore away for the Delaware Breakwater—Cape Henlopen bearing about northwest. I steered northwest by north.

Q. (By the COURT.) Close hauled?

A. No, sir; running free until in the Capes.

Q. When you bore away, whose watch was it on deck?

A. It was my watch, sir.

Q. How many were there in your watch?

A. Myself and two sailors.

Q. And how many were there in the crew of the vessel?

A. Six, all told.

Q. What time did you get into the breakwater?

A. About five o'clock in the morning.

Q. Whose watch was it on deck at that time?

A. It was the mate's watch on deck at that time.

Q. Do you know how many there were in his watch?

A. There was one man in his watch.

Q. Where were the rest of the crew?

A. All hands were on deck. The watch that was relieved at 4 in the morning did not go below. All hands remained on deck.

Q. Did you have a lookout?

A. Yes, sir.

Q. Who was it?

A. John Brown was his name.

Q. Whereabouts was he?

A. He was stationed forward of the jib traveller, with particular orders from me not to leave that lookout.

Q. How far was that forward of the jib traveller?

11 A. As far forward as a man can get without getting over the knightheads.

Q. Away up in the eye of the vessel?

A. Yes, sir.

Q. In going into the breakwater, were you under full sail?

A. I was under full lower sails.

Q. What sails had you on?

A. The mainsail, foresail, and two jibs, main and flying jib.

Q. Did you lower any of those sails at any time?

A. I did not, until I jibed ship to circle around in the breakwater, when I lowered my main peak.

Q. Where did you jibe ship?

A. The breakwater was off on my port side then—just before entering the harbor.

Q. In going into the harbor, did you notice the lights of any vessels at anchor there?

A. Yes, sir.

Q. How did they bear from you?

A. Well, sir, they bore off on my port bow. I made them on my port bow, and I kept them there—gradually keeping them on my port bow running in the breakwater.

Q. You always kept them on your port bow?

A. Yes, sir; I did not allow them to get ahead, nor on my starboard bow.

Q. Did you see any light ahead or on your starboard at any time?

A. I did not.
Q. Now, you say at 4 o'clock the mate took the watch?
A. Yes.
Q. Where were you then—where did you go?
A. The mate took the wheel and I went forward with my night-glasses, as I am always in the habit of doing when entering the breakwater, it being quite a difficult place to enter in the night.
Q. How many times have you been in the breakwater?
12 A. I can't name the number of times. I have been coasting on this coast ever since I was 14 years old. I never done a day's work on shore. I have been there a great many times.
Q. You say it is a difficult place to get in?
A. Yes, sir; if there are many vessels there on a dark stormy night, then a man has got to know his business if he goes in.
Q. You were forward with your glasses?
A. Yes, sir.
Q. How long did you stay forward?
A. Well, according to the lights in the breakwater, I remained forward until we were in clear of the fleet—of the vessels lying at anchor.
Q. Just explain exactly how the breakwater lies. Perhaps you can explain it so as the court can understand it.
A. The breakwater is situated at the southwest cape of the entrance to the Delaware.
Q. It runs how?
A. It runs about northwest and southeast, extending off from the point, leaving a gapway between the point and the entrance to the breakwater. It is in a northwesterly direction by Delaware Bay, and it is made of stone.
Q. (By the COURT.) The vessels whose lights you saw were where?
A. Off on my port.
Q. Whereabouts in reference to the breakwater?
A. They were anchored between the breakwater and the beach.
Q. You went forward with your glasses; how long do you say you remained there?
A. I remained there until within a very few minutes—not more than three minutes—before the collision.
Q. Looking out for lights?
A. Yes, sir; that is what I was there for.
Q. Then what did you do?
A. I went aft after I was satisfied that I was clear of all the
13 vessels, and I knew that it was time to come to an anchor. I relieved the mate at the wheel, and told him to go forward and stand by to come to.
Q. You went back and took the wheel, and then what happened?
A. I told the mate to haul down the flying jib and he did so. We were then under three sails. I was just going to say, "Haul down the main jib," as he sung out to hard aport my wheel. I did so, but I hadn't moved the wheel more than three spokes before she slammed foul of the schooner.
Q. How much had you fallen off?
A. Well, she had just fairly commenced falling off. I don't think she had fallen off the sixteenth of a point—not more than half a point at the outside.
Q. Could you see ahead at all while you were at the wheel? Was there anything to obstruct your view ahead?

A. Nothing whatever on the weather side. I was at the wheel; there was to the leeward.

Q. How was your sails just before the collision—off to the port or starboard?

A. Our sails were off to the starboard side.

Q. What was the character of the night?

A. It was a thick, overcast night, a very threatening night; and just at the time we entered the harbor it began to spit snow a very little; you could feel it on your face.

Q. It was not a clear night?

A. No, sir; the morning was clear.

Q. How far could you see lights that night?

A. Oh, well, I could see lights a mile and a half—a vessel's lights.

Q. Without the aid of your glasses; with the naked eye?

A. Yes, sir; a good vessel's signal light I could see that far.

Q. How far could you see a vessel?

A. Not 50 feet without a light, when I entered the harbor.

14 Q. How fast was your vessel sailing at the time of the collision?

A. I presume she was going about 5 knots. We deadened her speed considerably by slacking in some sail.

Q. How soon after you got back to the wheel was it before the collision took place?

A. I don't think it was more than two minutes, as near as I can remember.

Q. While you were forward did you see John Brown?

A. I did.

Q. Was he forward of you or aft?

A. He was forward of me.

Q. How much further forward?

A. Well, not more than the width of a man. I was as near to him as I could get. He was as far forward as he could get; we were both together.

Q. What was he doing there?

A. Looking out.

Q. Doing anything else at all?

A. No, sir. I charged him particularly to look out and do nothing else. That was his duty.

Q. Where was the rest of the crew?

A. Standing forward looking out and waiting orders to come to.

Q. Up to that time no orders had been given?

A. No, sir; no orders had been given to come to.

Q. Before you got into the breakwater, had you prepared your anchors for coming to?

A. Both anchors were cleared away and hung at the catheads, and all ready to let go. Those were my orders to the mate; and he said they were ready.

Q. Did you see they were so?

A. Yes, sir; because I see them so after the collision happened; after I went forward.

Q. You say that you received an order to hard aport. Whom did that order come from?

A. From the mate.

Q. Did you hear him give the order?

A. I did.

15 Q. Did you hear any hail from the lookout?

A. No, sir; well, I heard the lookout say, "halloa! what's that?" and that is all. I didn't know what it meant, when the mate sung out instantly, "hard aport," and I done so.

Q. When you heard that hail of the lookout, did you look up to see what was ahead?

A. I looked; yes, sir.

Q. Did you see anything?

A. I couldn't see anything. I didn't see anything when we struck the vessel.

Q. Did you see any light at all?

A. No, sir.

Q. If there had been a light there could you have seen it ahead?

A. Yes, sir; I was looking under my booms, and everywhere, as I always do when I am in the breakwater, as it is a bad place to be in at night.

Q. When you collided with the Julia Newell, how did you strike her?

A. As near as I could tell—it was very dark—we struck her on her port side with our starboard—nearly a square blow—a little quartering from aft forward, on her port side, in forward of her fore rigging; our flying jibboom went underneath her forestay and carried away our fore-topmast. We struck her on the port bow.

Q. After the collision, what did you do?

A. After the collision I immediately went forward.

Q. What was done with the vessel—on board the vessel?

A. Well, the vessels gradually got separated one from another, and we dropped immediately astern of the Julia Newell and cast anchor.

Q. (By the COURT.) How far away from her?

A. Very close to her; not more than one length, so that we had to swing around after that and move her a little ways forward.

Q. After the collision you went forward?

A. Yes, sir.

16 Q. Did you look to see if there was anybody on the deck of the Julia Newell?

A. I looked.

Q. Did you see anybody?

A. I saw a man on deck when I went forward.

Q. Did you notice whether he was dressed?

A. I couldn't tell whether he was dressed or not. I noticed one man only.

Q. After the collision, captain, did you have any conversation with any of the crew of the Julia Newell?

A. At the time or soon after?

Q. Yes.

A. No, sir.

Q. Did you hear any conversation between any of your men and any of the Julia Newell?

A. I heard my mate ask them what they was doing lying there without a light up.

Q. Did you hear any response?

A. He said that we knocked his light out.

Q. Is that all you heard?

A. That is all I heard.

Q. Did you have any conversation at any time after that?

A. About 20 minutes, I should judge, after that a boat came along

and passed our vessel with a lantern up, and said they were sinking. I asked them to come aboard of my vessel.

Q. What did they say?

A. They said no, they would go ashore.

Q. Is that all?

A. I insisted on their coming, but they wouldn't. Then I asked them why in the world they did not have a light burning, and the answer was from some one in the boot, Our light was burning good at 10 o'clock the night before. That was the answer I received.

Q. Is that the only conversation you have ever had with any of the officers or crew of the vessel?

A. That was the only conversation I ever had with any of the officers or crew. The captain, or who was said to be the captain, was on
17 board of my vessel the next day. He was not on board his own vessel at the time of the collision.

Q. What conversation did you have with him the next day?

(Objected to.)

Q. (By the COURT.) Who was there on board your vessel at the time of this conversation?

A. I think James Robinson was present—the only one.

Q. And the captain?

A. And the captain and myself, and some other gentleman with him, and the mate. In fact, I never recognized the mate to know him.

Q. What was the conversation?

A. Well, sir, they came very near my vessel, and I asked them to come aboard, and I put over my side-ladder and they came on board, and I invited them down in the cabin; and then they set to asking me what I was going to do about this affair, and I said to him, "Captain, it is a hard case, and I am very sorry it has occurred, and," says I, "if you had had a light burning there would have been no cause for any accident and you would have avoided this trouble." He replied and said that he was not aboard his vessel himself; his family was ashore and he was ashore. "But," says he, "my mate says that the light was burning, and I never knew my light to go out in my life." That was about all the conversation. He threatened to recover damages if he could.

Q. Did you have any conversation on the deck of the Clara with anybody?

A. I did not.

Q. Did you hear any conversation?

A. I did not.

Q. In anchoring in the breakwater, is it or not customary to set an anchor watch?

A. Yes, sir; it is customary and lawful to set an anchor watch.

Q. And on the night of this collision, did you have such a watch set yourself?

A. Yes, sir; I did.

18 Cross-examination by Mr. BLACK:

Q. How large a vessel is yours?

A. 295 tons and some hundredths.

Q. I understand you to say that you rounded to at some period before this collision. How long before was it that you rounded to? Was it just previous to the collision?

A. I didn't say so, sir. I said that I jibed ship, gradually circling round on my course into the breakwater. I didn't heave my vessel to. What I call rounding to is coming to and letting my anchor go.

Q. How long a time were you performing that manœuver before the collision?

A. I presume, as near as I can tell, from 15 to 20 minutes.

Q. The shore of the bay was ahead of you as you went into the bay; you were sailing directly towards one shore of the bay before you commenced to jibe, were you not?

A. When I first entered the cape I was sailing the course of the bay.

Q. In what direction were you sailing when you passed the cape?

A. Northwest by west-northwest.

Q. And you kept that course until you jibed, you say?

A. Yes, sir. Not quite; I was gradually curving, and finally I jibed.

Q. Had you passed the village of Lewes before you jibed?

A. I didn't pass the village of Lewes at all.

Q. Did you see the lights of the village lying on the shore to your left?

A. I did not.

Q. This schooner Julia Newell that was sunk—on the next day was she not lying off from the village, this side of the Delaware Breakwater, towards the village?

A. She was lying in the upper part of the breakwater harbor, off the village of Lewes.

Q. And were you further away from the breakwater than she was, where you anchored?

19 A. No, sir; I was inside of her.

Q. Towards where?

A. Towards Lewes.

Q. But how in regard to the position of the breakwater? Was she nearer than you to the breakwater?

A. Yes, sir.

Q. What kind of weather was it that morning?

A. Thick, overcast weather and threatening a snow-storm.

Q. Did you keep regular account of time in your boat? Did you have bells?

A. Yes, sir.

Q. How long after the change of the watch was it before this collision occurred—about how long?

A. About one hour.

Q. How long was it before daylight?

A. Well, it was a short time before daylight; I could not name the minutes.

Q. When was it that you left the wheel and went forward with your glasses, as you said? After you jibed?

A. No, sir; when we were nearing Cape Henlopen—the entrance of the capes.

Q. Did you go forward again after that?

A. I was forward when we jibed.

Q. Who was at the wheel at that time?

A. Well, there was one of the men; I forget which it was.

Q. You remained forward how long, about?

A. Well, I remained forward till not more than two or three minutes before the collision.

Q. How long had you been forward altogether before the collision?

A. I had been forward off and on from 3 o'clock.

Q. When you came back who was at the wheel—from going forward?

A. Mr. Cranmer, the mate.

Q. What orders, if any, did you give the mate at that time?

20 A. I told the mate to stand by to come to, and he proceeded forward and awaited my orders.
Q. In executing that order what was the first thing that was done?
A. I ordered him to haul down the flying-jib.
Q. Did you make an order of that kind to him specifically?
A. I did.
Q. Did you see that done?
A. I heard it done.
Q. How long after the collision was it—or before the collision—that you heard the flying-jib come down?
A. I presume it was a minute, or such a matter—a very short time.
Q. Wasn't it while the flying-jib was coming down that the collision occurred?
A. No, sir; we had just got the flying-jib down.
Q. Did you hear any hail from the Newell?
A. I did not.
Q. After the collision, did you hear any hail from the Newell?
A. I did not.
Q. Did you hear any inquiry made in relation to what the name of your schooner was?
A. Yes, sir; I did.
Q. Who made that inquiry?
A. The man that was on the deck did ask that.
Q. What was the answer?
A. I gave no answer. I didn't recollect anything about its being mentioned until after I got anchored. It was all confusion and I didn't make any reply. I anchored so close to him I had to drop away from him to keep clear of him. Yes, he asked me what vessel it was, and there was no reply made.
Q. How long did you lie at the breakwater after the collision?
A. I laid there till——
Q. This occurred on the 25th of February?
A. I think I sailed on the 26th—on the afternoon of the next day. I think so; I am quite sure of it.
21 Q. Did you observe the Julia Newell lying there when she was sunk?
A. Yes, sir,
Q. Which side did she lie on?
A. Directly ahead of me—with the wind to the eastward.
Q. How far off from you; was she in plain sight?
A. Yes, sir; from 50 to 75 yards, or 100 yards, or such a matter.
Q. How was the Julia Newell heading at the time of the collision?
A. At the time of the collision I judge she was heading about east-northeast; but it was impossible for me to say.
Q. That would be the natural direction for her to take, at an anchor?
A. Yes, sir.

Redirect:

Q. How were you heading after you came to an anchor?
A. East-northeast.
Q. In the same direction?
A. Yes, sir.
Q. How far do you think you could hear a hail that night?
A. I could hear a hail a hundred yards.
Q. You heard no hail whatever?
A. No, sir; no hail whatever.

Q. Did you see any lights on the Julia Newell?

A. No, sir; I did not until I went forward, when I could see a glimmering light in the skylight in the cabin, right under our bow. That was all the light there was on board the Julia Newell.

JAMES ROBINSON, being called for claimants, testified as follows:

Q. Were you present, Mr. Robinson, at a conversation between the master of the Julia Newell and the captain of the Clara the day after the collision?

A. Yes, sir.

22 Q. Where was it?

A. In the cabin.

(All this taken subject to objection.)

Q. State what that conversation was.

A. I heard him ask the captain——

Q. Who asked?

A. The captain of the Julia Newell asked the other captain what was to be done about the case.

Q. Well?

A. And the captain told him that he didn't know; and that there would not have been anything if he had had a light on. And the other captain said that his mate said there was a light there; and he observed again to our captain that he would bet a thousand dollars that his light never went out—he never knowed it to go out—and he would bet a thousand dollars that it didn't go out. That was all I heard. I was in the cabin when that was passed.

Q. Did you ever hear any one on board the Clara state to any one from the Julia Newell that all hands on your vessel were hauling down the flying-jib, and that you had no lookout?

A. No, sir.

Q. How far do you think you could see a vessel that night?

A. Without lights?

Q. Yes?

A. I don't think I could see a vessel without a light across this room; you couldn't without a light, sir.

Cross-examination:

Q. You were not all the time on the deck of your vessel when the people came from shore?

A. Yes, sir; when they came from the shore, I was on deck all the time, back and forward.

Q. You didn't go down in the cabin?

A. I was in the cabin when they first came on board.

Q. And you were present while this conversation was going on?

A. Yes, sir.

23 Q. And after that you went on deck?

A. Yes, sir.

Q. And they came on board while you were in the cabin?

A. Yes, sir.

Redirect:

Q. Did you hear any conversation while on the deck of the Clara?

A. Yes, sir; I heard the mate say to the mate of the Julia Newell—that was allowed to be the mate of the Julia Newell—and ask him, says he, "What were you doing there with no light?" And he observed to the mate, "It is one thing to say there was a light there, and it is another thing to say there was not."

Q. Did you hear the mate of the Clara state at that time that all hands were forward, and that you had no lookout?

A. No, sir; I did not.

Hearing adjourned until Monday, November 30th, 1874, at 12 m.

NOVEMBER 30TH, 1874.

Hearing resumed. Both sides present.

EVIDENCE FOR LIBELLANTS.

Mr. Black reads deposition of ELDRIDGE P. DRINKWATER, taken on behalf of libellants, as follows:

I am thirty-eight years of age, and by occupation a mariner. I am now first mate of the schooner Julia Newell, of Camden, Maine. On the 25th of February, 1874, and for some time prior thereto, I was first mate of the Julia Newell. On the morning of Wednesday, the 25th of February, 1874, I was lying at anchor on board said schooner at the Delaware breakwater. We came to anchor at the breakwater on the afternoon of the 23d of February, 1874. I was on deck several times between two o'clock and five o'clock that morning; the wind was
24 blowing moderately from the northeast, and the weather was cloudy. It was not snowing at any time when I was on deck. The moon went down about two o'clock. The morning was not very dark. I could see the light on the breakwater, which was about two miles and a half distant. I could see the lights of the farthest vessel in the breakwater with the naked eye. I could see the hulls and spars of the vessels at least half a mile. All the vessels in the breakwater were to windward of us. I was sitting in the cabin a little before five o'clock when the alarm was given that there was danger. I went immediately into the gangway, and in the direction of the noise I saw a green light and the jibboom of a vessel coming in our fore-rigging. At this time I noticed the signal-light of our vessel; it was set in the starboard fore-rigging, and was burning brightly. I had noticed the signal-light of our vessel every time I had been on deck this morning and it was burning brightly. I could see our signal-light from where I was sitting in the cabin when the alarm was given. I had been sitting there about half an hour. I had noticed the light about every fifteen minutes. The signal-light was set between the two after-shrouds, hung to one of the ratlings, a little over fifteen feet from the deck. I had some conversation with the people on board the schooner that run unto us.

Q. What was that conversation?

A. A man on board the Clara asked me where my light was. I don't know who this man was. I told him he had knocked it out. This was all the conversation, except that I asked what vessel it was; to which he made no answer, but asked where my light was, as above stated. I then told the steward to light our small lantern, which he did, and I went forward to see what the damage was. The damage was so bad that I could not tell what it was at that time. Found our schooner, the Julia Newell, was going down, and tried to save some of the things. Within a half an hour the bows of our schooner was under water, and then we left her with all hands in a boat and went ashore. We
25 had a cargo of about fifty-two hundred and sixty bushels of corn on board. In the afternoon of that day, about two o'clock. I ascertained that the name of the vessel that had run into us was the Clara. I first read her name with a glass from the beach, and I then

went on board of her. I saw when the vessel that collided with us swung clear that her head-gear and foretopmast were carried away. She then went on our port side and dropped astern of us, and anchored about a quarter of a mile distant. I saw her at anchor. The Clara struck us on the port side between the fore-rigging and the cathead. When she struck us her main peak was dropped and she carried whole foresail and jib. I saw that the collision had put his green light out. I did not see his red light at all. Our vessel was heading north-northeast. The wind was about northeast. I did not notice how the Clara was heading when she struck us. The Julia Newell was raised the Sunday following and I saw her; she was cut down outside five and a half planks; the forward shroud of fore-rigging was carried away on each side of our schooner; the head-gear was not damaged of any consequence. Our schooner was cut down two and a half planks below the water-line, and cut us into the depth of four deck planks. The Clara struck us a little angling, the acute angle being forward between the two vessels pretty nearly head on.

Q. Did you have any conversation with any one on board the Clara after the collision? If so, state with whom, and what it was.

A. As I was passing by the Clara in a boat going ashore, some one on board the Clara asked me to come on board that vessel. I don't know who asked me; I made him no answer; he halloed again and said that we had no light at all. The steward told him, "Our light was burning when he went below." I told the steward to keep still; he halloed again, and told me to come on board; told me I would get swamped on the beach. I told him I was going ashore, if I did
26 get swamped; this was all I said to him. I went on board the Clara about 3 o'clock that day. I had some conversation with some man on the deck of the Clara; I don't know who he was. I asked him which way they came in; he said they came in round outside the breakwater and around the ice-breaker. I asked him what sail they had on the Clara after they passed the ice-breaker. He told me they had the main peak dropped and whole foresail and jib on her. I asked him if they had anybody looking out; he said no, but that all hands were hauling down the flying jib. I had some conversation with the captain of the Clara in the cabin of that vessel on the same afternoon. When I went into the cabin the captain of the Julia Newell, who was with me, told the captain of the Clara who I was. The captain of the Clara asked me what I knew about it. I told him I knew all about it, from the time I heard the man halloo until their schooner was clear from ours. I told him it didn't commence to snow until after five o'clock that morning. He said, "No, it wasn't thick." This was all the conversation I had with the captain. I had no conversation with anybody on board the vessel after this.

Our signal light was set between sunset and dark, and continued to burn brightly all night as far as I saw it.

Cross-examination:

I joined the Newell a year ago last June. We went into the breakwater on Monday afternoon; we were bound from Newcastle, Delaware, to Hyannis, Mass.; we had four men all told; we anchored in the Beak the nearest to the railroad pier, about half a mile from the beach—Lewes is about half a mile further up; we stopped there on account of wind and weather; there was prospect of storm—a southerly storm; the wind was blowing a good whole sail breeze; we put out the big anchor; we lay about two and a half miles from the breakwater; the light on the

Q. Did you hear the mate of the Clara state at that time that all hands were forward, and that you had no lookout?

A. No, sir; I did not.

Hearing adjourned until Monday, November 30th, 1874, at 12 m.

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breakwater bore northeast; saw other vessels in the breakwater;
27 no vessels between us and the shore when we anchored; the nearest vessel was about half a mile from us—some on the starboard bow, and one on the port bow; we headed at anchor about W.S.W. when we first anchored; the tide was running out; sent captain ashore as soon as we anchored; his wife was at Lewes. I suppose he went to see her; all our men were on board this night except the captain.

When I was in the cabin of the Clara that afternoon when the conversation took place, there was Capt. Shepherd, the captain and mate of the Clara, Capt. Lubker, and myself present. They were talking when I went down. I have stated all that was said except one thing. I did not answer the man that hailed me from the Clara when I was in the boat because he would not tell me the name of his vessel. The Clara anchored to the southward and eastward of us after the collision, about one-quarter of a mile distant.

Between 5 and 5½ o'clock that morning it commenced to snow; it was a heavy storm—pretty tough storm; wind canted more to eastward after I got ashore. I thought the man I asked if they had any lookout on the Clara was the second mate.

It is the steward's duty to take care of the lamps. We purchased the oil used in the lamps at New York. I don't know what day. We kept the oil in a tin can; it was the same oil we burned in the cabin; the oil had not troubled us any. A man named Tibbets set the lamp that night; it was set between sunset and dark; it was set in the starboard fore-rigging. None of the men stayed ashore that night. The captain was not on board when the accident occurred. I took the first watch below that night; it lasted till 11 p. m.; then I was called, and I called Tibbets to go on watch, and I again turned in. I went on deck at 11 p. m.; we lay at the breakwater all this night and the next day and night, until 5 o'clock next morning, when the accident occurred. Tibbets set the signal light on the night of the collision. I took the first watch below as usual. The steward had the first watch that night on deck.

28 I did not come on deck after I went below, until two o'clock in the morning. I was called by Tibbets to go on watch. I went on deck for a few minutes, and returned to the cabin and sat down; left no one on deck. At this time the weather was cloudy; wind was northeast and moderate; our vessel headed north-northeast; no one awake in the cabin with me. I was reading an almanac in the cabin. I don't know exactly the time I went on deck again; I went on deck again before the collision. I did not see the Clara at that time. I remained on deck ten or fifteen minutes; it didn't snow or rain; the wind had increased. I went below again and sat in the cabin; it was cold outside—a man wanted mittens on. I did not go on deck again until I heard the halloa; when I went on deck then there was no one of our men on deck; when I got into the gangway I looked over the port side forward and saw the green light of a vessel approaching us; at that time I think the Clara was about once her length off; she struck us almost immediately; it was not snowing; there was no snow on the deck; this was about 10 minutes before 5 o'clock; it was before daylight; it was cloudy and overcast, wind increasing and likely to storm. There was a moon that night but it went down between 2 and 3 o'clock that morning. I could see our signal light from the cabin through the window. I could thus see the light by stooping as I sat in the cabin. I stooped and looked at the light a good many times; the light was about 70 or 80 feet from where I sat in the cabin. I did not fall asleep at any time while sitting there.

The Clara struck us with her stem on the luff of our bow, between the cathead and the fore-rigging, angling aft.

Redirect:

I cut the lantern from the rigging of the Newell on Thursday following the accident, in the forenoon; the globe of the lantern was partially under water; it hung as it did when we put it up, with the exception that the lanyard had torn the bottom ring out. The lantern was swashing in the water; the lantern had some oil and some water in it; the wick was all right—I mean by all right that the wick was in it; it was a cotton wick.

ELBRIDGE P. DRINKWATER.

Sworn to before me this 1st day of October, 1874.

EDWARD L. OWEN.
U. S. Commissioner.

Mr. Black reads deposition of LEROY SCOTT DAVIS, taken on behalf of libellants, as follows:

I am twenty-four years old; I live at Rockport, Maine; I do jobs about shipyards and quarries, and go to sea sometimes. I have been five trips in all. I was on the schooner Julia Newell, as cook. She left home in January, I think it was. That was my second trip. I had gone as cook on the first trip, and had been gone four weeks. I remember the Julia Newell lying at the Delaware Breakwater. She anchored there about four o'clock on the afternoon of the 23d of February. Nothing had occurred down to the time of the collision with the Clara; that occurred about 5 o'clock on the morning of Feb'y 25th; I was in my berth, asleep, at the time; I had turned in at 11 o'clock. I had been on watch from 8 to 11 o'clock that night, part of the time in the cabin and part of the time on deck. Mr. John M. Tibbets took the watch after me, and I turned in. When I went below at 11 o'clock it was a little overcast; there were a few clouds, not many; it was considerable cold. We had a good signal-light in the fore-rigging, on the starboard side. I attended to taking care of that light. I had trimmed it that forenoon. I put oil into it and wiped the glass and cut the wick. There was a good long wick. John M. Tibbets attended to hanging the signal light. The schooner hitting us woke me up, and I went out into the companion-way and asked what the matter was. I went down into the galley and fetched out a lantern and handed it to the mate. When I came out into the companion-way I saw a schooner with her bow into us, forward of us, in the rigging, on the port side; and the mate went forward, and came back and told us to put our things in the boat, which we did.

The weather when I came out was heavy; wind northeast. It was almost daylight; could see half a mile. There was no snow when I came out of the cabin. It commenced snowing about half an hour after we were in the boat.

I shouldn't think there were any vessels at anchor nearer than a quarter of a mile of us. There were three on board our boat at the time of the collision. I saw no lights on the Clara. After we got in the boat we rowed ashore. We had a talk with somebody on the Clara.

Q. What was said?

A. He said, "Come aboard." The mate didn't answer him, and he hollered again and said, "Where's your light?" and I said, "When I turned in it was burning all right." We left then, and went ashore.

I don't remember hearing any hails while I was on the schooner at the time or after the collision.

I stayed all day at Lewes, and on the next day went with the mate of our schooner and Tibbets on board the schooner Mary Clark, which was anchored in the breakwater. The mate and Tibbets and, I think, Edward Small, a hand on the Mary Clark, went in the small boat that brought me to the Mary Clark to the Julia Newell. I won't take my oath that I see them take the light down, but I am pretty sure I did, and went ashore. I was standing on the Mary Clark's deck. That was about a half a mile from the Julia Newell—perhaps more and perhaps less. I came home in the Mary Clark.

Cross-examination:

I think I could see the lantern of the Julia Newell from the deck of the Mary Clark. I won't swear that I could see it. I don't suppose the men were doing anything else in the rigging. They went after
31 the lantern. I think they went to the Julia Newell about two o'clock in the afternoon. It was clear.

This was the second voyage I had been on. The other voyage was about one month's duration, so that up to the commencement of this voyage I had only had one month's experience in going to sea.

I had to cook and help on deck. I had the care of the lamps. The captain purchased the oil for the lamps. He last purchased oil on this voyage at Rockport; had had no difficulty with that oil.

It does require a little experience to trim lamps properly.

On the voyage before this I was cook—only cook. I had charge of the lamps. I trimmed the lamps every day on this voyage. I trimmed the red and green light that day. I can swear that I put oil in this lantern that day. I remember it because I know that I trim my lights every morning and never fail—always put oil. When I came on deck I did not mind any lights on the beach. It was not snowing. It was cloudy; not dark. Could not see the shore very plain. It was over a mile off. The day had begun to break. When I went on deck I found the mate on deck. I don't remember hearing any hallos. The light was fixed about ten feet up in the rigging—that is, ten feet from the deck. I know it was a good signal light, because it always has worked nicely. I know it worked well enough in my watch; after that, I don't know. The mate asked me to hand the lantern to him.

I won't be sure that I trimmed the red and green light that day. We went into the breakwater on account of the weather. We had had heavy winds. My only experience in trimming lamps before this particular voyage was on the one of four weeks' duration.

LEROY S. DAVIS.

Sworn to before me this 6th day of October, 1874.

GEORGE A. BLACK,
Notary Public, N. Y. Co.

32 Mr. Black reads deposition of EDWARD SMALL, taken on behalf of libellants, as follows:

I am 26 years of age; I reside in Rockport, Maine; I am a seaman by occupation. In the latter part of February, 1874, I was at the Delaware Breakwater, in the State of Delaware. I was employed there as a seaman before the mast on board the schooner Mary Clark. I was there at the time of the collision of the schooner Clara with the schooner Julia Newell. I first heard of the collision by the Julia Newell's boat, with Mr. Drinkwater and Mr. Tibbets in it, who came on board our ves-

sel and said that a schooner run into them and sunk the Julia Newell. Mr. Davis was with them when they came on board.

They remained on board an hour or more, and then said guess they would go ashore. Mr. Armstrong and I went with them. Mr. Drinkwater said that we would go on board the Julia Newell and cut the lantern down. We went on board the Julia Newell, and the lantern was under water, bobbing out as she rolled. The vessel laid on her side, full of water. The lantern was a signal lantern. We found it in the forward rigging, on the starboard side. It was cut down by Mr. Drinkwater. We carried it ashore and up to a store—a grocery store.

We examined the wick, and concluded it was in good order when it was put up, and it wasn't burned down black same as it would have been if there had been no oil in the lantern. We lit the wick. It would burn up for a little while, and then flicker and go out. We lit it twice or three times, with the same result.

I examined the wick myself, personally. The wick was watery and oily together. It looked good; wasn't black; was a clean wick. I mean by "clean wick," as clean as any wick would be, standing in oil.

33 Cross-examination:

Q. You said the wick was clean and white and not burned down black, did you?

A. Yes, sir.

Rockport, Oct. 19th, 1874.

CHARLES EDWARD SMALL.

ROCKPORT, ME., *October 19th*, 1874.

Sworn to and subscribed before me.

GEO. H. M. BARRETT,
Notary Public.

Mr. Black reads deposition of PHILIP R. ARMSTRONG, taken on behalf of libellants, as follows:

I am twenty-six years of age, and by occupation a seaman. I have been going to sea about ten years. I am now captain of the schooner Ellen H. Gott, of Camden, Maine. On the 25th day of February, 1874, and for some time prior thereto, I was first mate of the schooner Mary Clark, of Camden, Maine. I was lying at anchor in the schooner Mary Clark, at the Delaware Breakwater, on morning of the 25th of February, 1874. At half-past four o'clock in the mor ing of this day I was on deck, but went below and turned in about that time; it was then snowing and thick, and the wind was blowing from the northeast; it was blowing a gale; it was very dark when I went below; when I went below I could see with the night glass that there were a good many vessels lying in the breakwater. I could see the lights of the vessels at anchor in the breakwater without the night glass, but by using the night glass I could see their hulls and spars. At the time I went below I could see the hulls of the vessels through the night glass a distance of two miles. I could see the lights of the vessels with the naked eye a distance of a mile. I did not know the names of any of the vessels lying in the breakwater at that time except the schooner Julia Newell. She was lying up towards Lewes about a mile from us. We were lying right under the lee of the breakwater. At fifteen minutes past
34 four o'clock, when I came on deck, I noticed the ligh s of the schooner Julia Newell; they were then burning brightly. I did

not notice them when I went below at half-past four o'clock. I came on deck again at seven o'clock in the morning of same day; the wind was still blowing a gale from northeast, but it was not storming; it had not cleared off, but it had nearly stopped snowing. While I was on deck, before half-past four, my vessel was heading to the wind; the Newell's lights bore northwest about over our port quarter; I could see the hull and spars of the Julia Newell; she was heading about northeast.

Further examination adjourned to September 20th, at 12 o'clock noon.

SEPTEMBER 20TH, 1874.

The schooner Mary Clark anchored at the breakwater about ten o'clock on the morning of the day before. The Julia Newell was there when we got there; I understood she had been there about 24 hours.

Cross-examination:

When I first arrived it was blowing a gale of wind from the northeast. I went in and anchored my vessel under the breakwater. The Julia Newell lay to the westward of us, on our starboard side as we were going in; she lay up near Lewes, which is on the same shore, but to the westward of the breakwater; she was lying at anchor about a quarter of a mile from the shore. I saw some other vessels lying there but cannot tell how many, nor do I know the names of any of them. Lewes is about two miles to the westward from the breakwater. There is nothing at Lewes to protect vessels lying there from the effect of northeast winds. The Newell lay exposed to this storm which was raging.

I went upon the deck of my vessel at twenty minutes past four on the morning that the Julia Newell was sunk. I went out to look after my vessel because it was blowing heavily from northeast, which is about across the bay. The course up the bay is north-northwest. There was a short, heavy sea running, not difficult to navigate. It was snowing when I came on deck. Snow had gathered on the deck of my vessel. On the main deck there was no snow, but around the house it had drifted two feet. It was not very cold. The water broke over our deck, but it did not freeze. I remained on deck about fifteen minutes and then went below. It was snowing very little when I went below. I did not come on deck again until seven o'clock in the morning, when I saw that the Newell had sunk. I could see her masts out of water.

I knew Capt. Shepherd, the master of the Newell, and had known him about six months before this. I know his mate, and had known him about a year. The captain's folks lived at Rockport, and his wife's folks lived at Lewes, above stated. The captain's wife was at Lewes at that time. I don't know but I heard the mate say that the captain was ashore that night. The mate lived at Lincolnville, Maine. I don't know that he had any friends at Lewes. He said he was aboard of his vessel that night. I used my night glass when I came on deck to see if any vessel had gone ashore.

Q. What lights did you see on the Julia Newell?

A. I saw one white light; that was all I could see on her. I saw some other lights close by the Julia Newell. The lights were separated apart quite a distance.

Redirect:

The Julia Newell was to the westward of us as we came in. We came in between Cape Henlopen and the breakwater. We came down the bay and took shelter to avoid the coming storm. I looked at the time by my watch when I came on deck. There was a good many vessels anchored behind the breakwater; there were not many anchored about where the Julia Newell lay; four or five. I live at Rockport, Maine. The mate of the Julia Newell was Elbridge Drinkwater. The Mary Clark was anchored near the easterly end of the breakwater. There is an ice-breaker to the westward of the breakwater. The breakwater is
36 large enough to accommodate thirty to thirty-five small vessels. The other vessels near us lay to the westward of us. The breakwater was not full.

The Clara was anchored astern of the wreck of the Julia Newell, to the southward, and in shore of her, as I saw her in the morning. The wind in the morning was still northeast.

PHILIP R. ARMSTRONG.

Sworn to before me this 25th day of Sept., 1874.

GEO. A. BLACK,
Notary Public N. Y. Co.

Mr. Black reads deposition of HENRY F. SCHELLENGER, taken on behalf of claimants, as follows:

I am 22 years of age, and by occupation a sea-faring man; have followed the sea nearly six years; reside at 117 Wharton street, Philadelphia. I am attached to the pilot-boat Henry Cope, of Philadelphia; have been on her for about six years. I am apprenticed as a pilot. Last February my boat was at the Delaware Breakwater, lying at anchor; she had been there about one day; the crew is changing all the time; we had five apprentices; usually have three or four pilots on board. We were anchored at the ice-breaker, that is, a little above the breakwater. I remember seeing the schooner Julia Newell there; I saw her there first the night before she was run into. She was at anchor near the Pilot-boat Roads—a little off-shore of them—abreast of the town of Lewes.

The five apprentices of the Cope went ashore at Lewes from our boat the same morning we anchored, and stayed there till between ten and eleven o'clock that night; we rowed right by the Julia Newell when we went off to our boat that night; I don't think she had got there in the morning.

Q. Do you know of vessels anchoring in the place where the Newell was anchored?

A. Yes.

37 Q. How often have you seen vessels anchored there?

A. Very often.

There was a three-masted schooner anchored in the roads, to the west and north of the Newell; she was lying there when our boat came in. There were the four apprentices and myself in the skiff when we went off to our boat that night; we passed near enough to see the Newell all plain; she had a bright white light in the starboard fore-rigging; the harbor was full of vessels, anchored in different places; they were anchored around her—some on east and some on the west. I didn't see the Julia Newell again until after she was run into and sunk, and lying on her side; that was the following day, about 12 o'clock, after the snow-storm had cleared up. After going on board our pilot-boat I stayed on

not notice them when I went below at half-past four o'clock. I came on deck again at seven o'clock in the morning of same day; the wind was still blowing a gale from northeast, but it was not storming; it had not cleared off, but it had nearly stopped snowing. While I was on deck, before half-past four, my vessel was heading to the wind; the Newell's lights bore northwest about over our port quarter; I could see the hull and spars of the Julia Newell; she was heading about northeast.

Further examination adjourned to September 20th, at 12 o'clock noon.

SEPTEMBER 20TH, 1874.

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Cross-examination:

When I first arrived it was blowing a gale of wind from the northeast. I went in and anchored my vessel under the breakwater. The Julia Newell lay to the westward of us, on our starboard side as we were going in; she lay up near Lewes, which is on the same shore, but to the westward of the breakwater; she was lying at anchor about a quarter of a mile from the shore. I saw some other vessels lying there but cannot tell how many, nor do I know the names of any of them. Lewes is about two miles to the westward from the breakwater. There is nothing at Lewes to protect vessels lying there from the effect of northeast winds. The Newell lay exposed to this storm which was raging.

I went upon the deck of my vessel at twenty minutes past four on the morning that the Julia Newell was sunk. I went out to look after my vessel because it was blowing heavily from northeast, which is about across the bay. The course up the bay is north-northwest. There was a short, heavy sea running, not difficult to navigate. It was snowing when I came on deck. Snow had gathered on the deck of my vessel. On the main deck there was no snow, but around the house it had drifted two feet. It was not very cold. The water broke over our deck, but it did not freeze. I remained on deck about fifteen minutes and then went below. It was snowing very little when I went below. I did not come on deck again until seven o'clock in the morning, when I saw that the Newell had sunk. I could see her masts out of water.

I knew Capt. Shepherd, the master of the Newell, and had known him about six months before this. I know his mate, and had known him about a year. The captain's folks lived at Rockport, and his wife's folks lived at Lewes, above stated. The captain's wife was at Lewes at that time. I don't know but I heard the mate say that the captain was ashore that night. The mate lived at Lincolnville, Maine. I don't know that he had any friends at Lewes. He said he was aboard of his vessel that night. I used my night glass when I came on deck to see if any vessel had gone ashore.

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36 large enough to accommodate thirty to thirty-five small vessels. The other vessels near us lay to the westward of us. The breakwater was not full.

The Clara was anchored astern of the wreck of the Julia Newell, to the southward, and in shore of her, as I saw her in the morning. The wind in the morning was still northeast.

PHILIP R. ARMSTRONG.

Sworn to before me this 25th day of Sept., 1874.

GEO. A. BLACK,
Notary Public N. Y. Co.

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The five apprentices of the Cope went ashore at Lewes from our boat the same morning we anchored, and stayed there till between ten and eleven o'clock that night; we rowed right by the Julia Newell when we went off to our boat that night; I don't think she had got there in the morning.

Q. Do you know of vessels anchoring in the place where the Newell was anchored?

A. Yes.

37 Q. How often have you seen vessels anchored there?

A. Very often.

There was a three-masted schooner anchored in the roads, to the west and north of the Newell; she was lying there when our boat came in. There were the four apprentices and myself in the skiff when we went off to our boat that night; we passed near enough to see the Newell all plain; she had a bright white light in the starboard fore-rigging; the harbor was full of vessels, anchored in different places; they were anchored around her—some on east and some on the west. I didn't see the Julia Newell again until after she was run into and sunk, and lying on her side; that was the following day, about 12 o'clock, after the snow-storm had cleared up. After going on board our pilot-boat I stayed on

board all night, until about 5 o'clock in the morning, as near as I could judge. We then got under weigh, and headed out above the ice-breaker; it wasn't so thick but you could tell what vessels were in the harbor; several vessels passed our bows, and we could tell they were schooners—they were pretty close—one of them was. When we got under weigh we could distinguish the vessels in the harbor, and tell what they were. It commenced to spit snow about the time we hove our anchor up, and snowed harder and harder till about 12 o'clock. About an hour after we started we came back again to anchor, behind the breakwater, and stayed there until three o'clock next morning. I went ashore that day after the collision, and passed near the Julia Newell—had to go that way to go ashore; I saw her lantern hanging in the starboard fore-rigging, it was pretty close to the water; the vessel lay head in on the land, on her port side.

Cross-examination:

The Julia Newell was at anchor before we came to anchor; we passed within about 300 yards of the Julia Newell when we came off from Lewes that night; she did not have any sails set; could see her distinctly—it was then a clear, moonlight night, and the wind was very calm.
38 When we heaved anchor the next morning it was very disagreeable, snowing and blowing, with the wind east-northeast; it was not snowing so hard when we got under weigh, it was hazy like, it was not thick. We just cleared one boat that we passed; we saw that she was a three-masted schooner; she had sails up; we did not see anybody on her deck; saw distinctly that she was a three-masted vessel. We came in from sea, but I don't recollect what time it was; I don't know anything about the collision; didn't see the Clara; don't know anything about the character of the night after I went to bed.

HARRY F. SCHELLENGER.

Subscribed and sworn to before me, Nov. 5th, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

Mr. Black reads deposition of FRANKLIN P. SHEPHERD, taken on behalf of libellants, as follows:

I am 35 years of age. Have been going to sea about 20 years. My present occupation is master of the bark Cienfugos. On the 25th day of February, 1874, and for some time prior thereto, I was master of the schooner Julia Newell. On the 23d day of February, 1874, I went into the Delaware Breakwater with said schooner for a harbor.

The schooner Julia Newell hailed from Camden, Maine; she was tight, staunch, and strong; she was 78 tons. When we went into the break she was laden with about 5,261 bushels of corn, and was bound from Newcastle, Delaware, to Hyannis, Mass. We anchored in the break up in what is called the Pilot boat Roads, about half a mile from the beach and about one and a half mile from the ice-breaker and about two and a half miles from the breakwater. My family lived at Lewes, Delaware. At about 7 o'clock on the morning of the 25th of February, 1874, the mate and two men came to my house and reported that the Julia Newell
39 had been run down and sunk. They said they did not know the name of the vessel that had run into them. I then went to get a boat to go off and ascertain the name of the vessel. Went to the beach and found it so rough that we could not launch a boat. At 2 o'clock p. m. it cleared off, and I took a glass and read the name of the schooner I judged to be the one that run down the Newell, and found her to be the

Clara of New York. I judged her to be the vessel from her head gear being carried away and her foretopmast was gone; the mate told me she was the vessel. About 3 o'clock p. m. we got a boat off the beach and went on board the Clara; my mate and Captain Lubker and some wreckers were with me. When I got on board the Clara I said to the captain of that vessel, "It is a pretty hard case the running into my vessel and sinking her, and that somebody would have to pay for it," or words to that effect. The captain of the Clara said, "you know you can't handle a light vessel as well as you can a loaded one." He said to me "you had no light up." I told him he would naturally say so whether we had a light up or not. About this time my mate came into the cabin. The captain of the Clara asked my mate "what he knew about it," and my mate told him "he knew all about it," and asked "why he (the captain of the Clara) would not give him the name of his schooner when he was asked;" the captain of the Clara said "he was flustrated at the time." My mate said to him, "you were not so flustrated but that you could ask me where my light was." I asked the captain of the Clara if it was thick at the time of the collision; he said "it wasn't so thick but that I could see nearly all the vessels in the breakwater except yours."

I saw the schooner when she was raised. She was raised on Sunday night following the accident. On Friday following the accident I went off to where the Newell was sunk. I found the signal lantern lashed in the starboard forerigging, the place where we usually set the signal light. We took the lantern and trimmed it and lighted it and set it up on the spring forestay that night, to guard against other vessels running into the spars of the Newell. I found a wick in the lantern, and there was some oil and some water in it. The lantern was partially under water when I found it. The lantern burned brightly when set in spring forestay.

The blow received by the Newell was one of a vessel coming head on to the bow between the cat-head and the forerigging, and cut the Newell down to the middle of the sixth plank, and inboard to the fourth or fifth plank of the deck. The forerigging was carried away and the foremast was chafed, and other damage done.

Cross-examined:

I was not on board of the Newell after we anchored at the break until after she was raised. I have not stated all the conversation that took place in the cabin of the Clara. After the accident, and on Friday night following the collision, the lamp was trimmed by Mr. Maul at his store in Lewes; took it there to have it trimmed; I saw him trim it; he was one of the wreckers; two of the wrecker's men were sent off in a boat to set it. I saw the lantern hanging in the rigging after the Newell sunk; it was hanging in the rigging with nothing but the top of it sticking out of water; it was a round globe lantern, a regular lense signal lantern; can't state the size of it; it is such as is generally used for a signal lantern.

I should think there were 60 or 70 sail of vessels in the breakwater for a harbor. A brig was anchored from a quarter to a half a mile ahead of of us, and to windward. It was two and a half miles from us to the furthest vessel in the breakwater. I was the furthest vessel to the westward. I was the furthest vessel to leeward. There was no vessel lying close by us. After conversing with the mate, I find that the signal lantern was cut from the rigging the day after the collision (Thursday.)

FRANKLIN P. SHEPHERD.

Sworn to before me this 1st day of October, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

41 Mr. Black reads deposition of JOHN M. TIBBETS, taken on behalf of libellants, as follows:

I reside in Booth Bay; my occupation seaman, and my age 32. Shipped on board the schooner Julia Newell 31st day of December last, as seaman, and was in her two months, and left her 'long the first of March, might have been the fifth or tenth; am not certain. I left the vessel Feb'y 25th last, at the time of the collision, but was in the place until the first of March; was in the Julia Newell a month and twenty-five days.

I was on board the schooner Julia Newell at the time of the collision of the schooner Clara with her, February twenty-fifth last. I hung the signal lantern the night before the collision. I hung it in the starboard forerigging, between sunset and dusk. I know that the lamp in the lantern was filled that day and properly trimmed. I saw the steward fill the lamp that day and cut the wick. My watch was from eleven o'clock until two, and during that time I was on deck several times. The first of the night, from the time that I hung the lantern until eight o'clock, I was on deck several times. I observed the light several times before eight o'clock when on deck, and that it was burning brightly. It was burning every time that I was on deck during my watch from eleven until two o'clock. It was burning brightly. After two o'clock I was not on deck again until at the time of the collision, about five o'clock. I noticed the light was burning brightly from five to seven minutes before calling Mr. Drinkwater.

The weather while I was on deck was overcast, not over and above thick. It wasn't so but what I could see the vessels' lights in the harbor, and the breakwater light.

I had turned in and when she struck us it waked me up. I went on deck and found the schooner into us. She struck us by the forerigging on the port side. I saw them haul down the main jib after I went on deck, then she dropped astern of us and came to an anchor, I should judge, about a quarter of a mile distant; could see her plainly. It was overcast weather at the time of the collision, and after.

42 Some thirty or forty minutes after the collision it began to snow some. Just after the time of the collision I could see the lights of some of the vessels in the harbor and the breakwater light, and could see the vessel that struck us very plainly.

The Julia Newell sunk about thirty or forty minutes after the collision. I visited the wreck the next day with our mate and two of the crew of the schooner Mary Clark, unknown to me. She was laying partly on her port side; some of her starboard quarter was out of water, and a part of her forerigging on the starboard side was out of water, and a part from twelve or fifteen feet from the deck up was under water. Mr. Drinkwater saw the lantern, and cut it down from the starboard forerigging and passed it to me in the boat. I saw the lantern in the fore starboard rigging where it was put before the collision; it was the same as when put up, with the exception of the lower ring being gone and being in the water. We took the lantern ashore to a place called Lewes, Del., and took it into a grocery store, and they took the lamp out of the lantern and tried it to see if it would burn. They lit it two or three times, and we found that it would burn a moment or two and would then splutter and go out. I suppose that the oil and

water being together in the wick was what made it. When they took the top off, the wick looked bright and clean, as any wick should after being burned in oil. The top of the wick did not look black and charred, same as it would if it had been burned without oil.

Camden, Nov. 11, 1874.

JOHN M. TIBBETS.

Sworn to and subscribed before me this eleventh day of November, 1874.

GEO. H. M. BARRETT,
Notary Public.

Mr. Black reads deposition of GEORGE H. DICKERSON, taken
43 on behalf of libellants, as follows:

I am sixteen years of age. I am a clerk in a grocery store. I reside in Lewes, Sussex County, Delaware. I know that the schooner Julia Newell was run into by the schooner Clara in February last. There was about the same date a signal lantern of the Julia Newell brought into Franklin C. Maull's store, in which I am employed as clerk. Franklin C. Maull opened the lantern, took a match and lighted the lamp. I was present from the time the lantern was brought into the store until it was lighted. It was lighted in the same condition that it was brought into the store.

GEORGE H. DICKERSON.

Mr. Black reads deposition of FRANKLIN C. MAULL, taken on behalf of libellants, as follows:

I am thirty years of age; I reside in the town of Lewes, Sussex County, and State of Delaware; am engaged in the mercantile business. In February last the schooner Julia Newell was run into by the schooner Clara, in the harbor of Delaware Breakwater. In a few days after the collision the signal lantern of the Julia Newell was brought into my store; I am satisfied it was brought in by the mate of said schooner and others; it was lighted in my presence in the same condition it was brought in my store.

FRANKLIN C. MAULL.

Mr. Black reads deposition of FREDERICK G. LUBKER, taken on behalf of libellants, as follows:

I am thirty-seven years of age; I reside in the town of Lewes, Sussex County, and State of Delaware; I am a shipmaster, and at present engaged in the wrecking business at this place. In February last the schooner Julia Newell was run into by the schooner Clara, in the harbor of Delaware Breakwater. I have been engaged in the wrecking business at this place since November, 1873. At five o'clock a. m. of the morning that the Julia Newell was run into, I took my spy-glass and looked towards the breakwater. I could see the break-
44 water light and the vessels' lights in the harbor. I looked at my watch when I left my house; it was then just five o'clock a. m. Between five a. m. and half-past five a. m. it commenced snowing. It was at least ten minutes after five, if not thirty after five a. m., before there was any snow. Between two and three o'clock p. m. of the day of the collision, I, in company with Captain Shepherd and the mate of the Julia Newell, proceeded on board of the schooner Clara. Captain Shepherd and I went into the cabin of the Clara. Captain Shepherd

asked captain of Clara how he came to run into his vessel; he answered that you had no light up. I could see all the vessels' lights in the harbor. The mate of the Clara stated at the time of the collision that he was forward hauling the head-sails down, and made a light under the bow, and sung out to the man at the wheel that there was a light ahead, in a moment after struck the Julia Newell. After hearing the above read, I will state that the captain of the Clara said that at the time of the collision it was not snowing, that he could see all the vessel lights in the harbor. The Julia Newell was sunk in the harbor of Delaware breakwater by injury received in the collision, in three fathoms of water. In a day or two after the collision, I, in company with the mate and others, went on board of the Julia Newell, and saw the mate go up the rigging and take the lantern down, and at that time the glass of the lantern was not smoked; it was put into the boat and brought ashore at Lewes.

CAPT. F. G. LUBKER.

EVIDENCE FOR CLAIMANTS.

Mr. Owen reads deposition of JAMES ROBINSON, taken on behalf of claimants, as follows:

45 I am a seafaring man; have followed the sea for the last twelve years, as cook and steward all the time. I am now connected with the schooner Clara. I was on the Clara at the time of the collision as cook and steward. I was on deck at the time; had been on deck—had been there about ten minutes. I was standing forward, between the traveller and fore-rigging. There was no one with me; but the lookout was forward, clear up, as far forward as he could get, walking across the bow. It was a pretty dark night; had commenced snowing a little just before the collision. I was standing between the traveller and fore-rigging at the time of the collision. I never saw anything until we struck her. I was looking in the direction of the schooner. I did not see any light on her of any kind; if there had been one there I should surely have seen it, as there was nothing at all in the way to prevent it.

I did not hear any hail from the schooner. I did not see the schooner before we struck her. I noticed her after we struck her. I did not see any light on her then. I looked for a light.

Q. Did you see anybody on her deck after you struck her?

A. No, sir; I did not see anybody at all.

Q. Did you afterwards have any conversation with the officers and men of the Julia Newell, or hear any conversation between them and the officers and men of the Clara in regard to the collision, or her lying there without lights? and, if so, state the same.

(Objected to.)

A. I heard the captain of the Clara ask the Julia Newell's crew, what in the name of the Lord you laying there with no light up? I understood somebody in the boat to say that their light was burning good at ten o'clock. This is all I heard.

I could not tell about what time the collision occurred. It occurred, I think, a little after five o'clock in the morning, before daylight. I heard our lookout say, "Hallo, what is this?" I could not hear

46 what else he said—as soon as he spoke she struck. It was not more than a minute after that the collision happened.

I saw lights of vessels off our port bow; did not see any off our star-

board, nor ahead. We had entered the breakwater before I came on deck. I did not at any time see any one on the deck of the Julia Newell.

Cross-examination:

The nearest vessel to us upon which I saw a light at the time of the collision was between two and three hundred yards on our port bow. We struck the Julia Newell head on, a direct blow. I don't know how our vessel was heading at the time of the collision. I did not see any lights off our starboard bow; I could not tell how far inside the breakwater we were at the time of the collision.

The way we were running the breakwater was on our port bow. We could not see it—nothing more than the lights of vessels lying in there. Our galley is midships. The Clara is a two-masted schooner.

When I first came on deck I went forward. I came out of the cabin, which is aft; I had just got out of my berth. I was standing on our starboard bow. We had on full mainsail, full foresail, and jib and flying jib; we had shortened sail because it blew so hard; we had taken in the topsails and all our light sails, except the four lower sails; I don't know what time of night these sails were taken in, because I was not on deck.

I had just got forward, had not been there half a minute when we struck the Julia Newell; all hands were on our deck when I came out—the captain, Lippincott, mate, Silas Cranmer John Brown, Johnson, Christianson and myself. John Brown was the lookout. I don't know who was on lookout when I turned in. I don't recollect what time I turned in that night.

Our vessel laid by the Julia Newell; we dropped off far enough to clear her, and anchored. None of the men from the Julia Newell came on board our vessel that morning. The captain came on in the afternoon of the same day. I don't know his name. We had run by some
47 vessels which were lying at anchor in the breakwater. Everything that I saw at anchor in there was lying on our port side. I don't know how long our captain had been on deck when I came on. I heard the conversation between the captain of our vessel and the Julia Newell in the cabin.

When I came on deck our captain was at the wheel, the mate was forward on the port bow, getting ready to let go the anchor; there was no one with him where he stood but John Brown, who was forward on lookout; Johnson was pulling down the flying jib. I had just started forward to help pull down the jib; I had not been called; no one sent me there. I saw what was going on, and I went to lend them a hand.

Redirect:

The conversation between the two captains was not the same as that I heard in the boat.

Q. In the conversation between the two captains did you hear anything said about the lights; if so, what?

A. Yes, sir; the captain of the Newell said he would bet a thousand dollars that the light never did go out. Our captain told him that he had no light, and the above was the answer to that.

Q. Did the captain of the Newell say where he was that night, whether on board his vessel or ashore?

A. He said he was ashore with his family.

Johnson and Christianson were taking in the flying jib; Brown was not helping them do it; Brown was forward of Johnson and Christianson; Brown was not helping the mate with the anchor.

Recross:

I don't know the tonnage of the Clara.

his
JAMES + ROBINSON.
mark.

Subscribed and sworn to before me this 7th day of April, 1874.
EDWARD L. OWEN,
U. S. Commissioner.

48 Mr. Owen reads deposition of PONTIUS CHRISTIANSON, taken behalf of claimants, as follows:

I am a seafaring man, and have followed the sea five years. I live in Brooklyn and expect to go to sea before long. I was on board the Clara at the time of the collision. I was on deck forward by the fore-rigging on the port side. I was on deck from twelve o'clock; I was in the captain's watch; went on duty at twelve o'clock; Johnson was in my watch; there were two in my watch besides the captain. While I was on deck the night was dark, cloudy, and thick, just started to snow. Johnson relieved me and I went forward. I continued on deck until the time of the collision; we were then running in from the breakwater. After four o'clock John Brown was on lookout; he stood forward in the eyes; I saw him there; I was forward all the time; I could see clearly all around forward of either bow. After four o'clock I don't know who had the wheel.

I saw the vessels strike. I was standing right forward at the time. We struck her on the port side forward of the fore-rigging a little slanting forward. I saw the Julia Newell a very short time before we struck her. It was not one minute. She was lying at anchor with no sails up. I saw a light shining through the cabin window. I saw no signal light; if there had been any there I would have seen it; I looked for one. I saw the cabin light about the same time we struck. I saw no one on the vessel before we struck; I did not hear any hail from her. After we struck I saw a person on her; he was around aft at the yawl boat.

The vessels hung together a couple of minutes or so; I can't tell how long; they parted themselves. After we struck and separated we dropped astern and let go the port anchor; we dropped anchor, and then lifted it and dropped it again further away from her. I saw no light in the rigging of the other vessel when we dropped anchor; I looked around after her.

As we came in I saw lights of vessels on our port bow. The vessels were lying inside the breakwater, all on our port hand. I saw no
49 lights of vessels off our starboard hand or ahead of us. I could see a vessel without any light that night about 30 yards off; I won't take any further than that; I mean by that I could not see any further than that.

The jib was standing when we struck. I helped haul down the jib. We just had the flying jib down when we struck. I heard somebody say "Hallo, what is this"; I can't say who. It came from forward. It caused me to look up, and I looked over the starboard bow and saw something dark and a light shining through a cabin window. The light bore almost ahead, a little on the starboard. Brown, the lookout, did not do anything towards lowering the flying jib; nobody but Johnson and me. I heard some conversation between our men and the men of the other vessel when they were in the boat.

The boat came alongside, and our captain asked the crew in the boat if they wanted to come on board to us, and they said no, they were

going ashore. They said they were sinking. They did not say anything about the light.

Cross-examination:

I joined the Clara for this voyage in New York. I don't remember the day we sailed from here. I think it was about 11 o'clock at night. After we left this port I don't remember how long it was before we bore up for the breakwater. I can't tell sure whether it was one day, two, or three before we bore up for the breakwater. I suppose we went into the breakwater for a harbor. When we bore up for the breakwater the wind was east-northeast. We could lay our course right into the breakwater.

When we so bore up we had all sails set—mainsail, foresail, three jibs. I don't know whether she had the topsails set or not. The wind was about aft. I don't remember what tacks we had aboard. The sails were jibing from time to time. I had two tricks at the wheel from the time we bore up until we struck. While I was at the wheel I don't remember what course we were steering. I don't remember what
50 course the captain gave me. I looked at the compass, but I can't remember the course. Between the time we bore up for the breakwater and the time we struck the schooner we had to trim sails. Before we saw the schooner we trimmed the sheets aft, but I can't tell how long before we saw her we trimmed them aft. When we trimmed them aft we had the port tacks aboard. I don't know what course we were sailing when we struck the schooner. We trimmed the sheets aft after four o'clock.

Our bobstay struck the schooner. We left her on our starboard side in getting clear of her—we dropped astern of her in getting clear of her.

When I saw the lights in the window they were right ahead, a little on our starboard bow. I saw this light through the side window of the cabin, the port side of her.

(The witness on being shown two pieces of paper fixes them, which is conceded by counsel on both sides to be at an angle of 45 degrees, glancing forward.)

I stayed on deck after four o'clock because I was ordered to stay. I was on duty all the time. I don't remember who let go the jib halliards. There was Johnson and John Brown on the lookout, and the mate was around forward, and myself and Robinson came forward when we let the flying jib down. Johnson and myself were hauling down the flying jib. The mate was forward, but I don't know where he was forward, or what he was doing. I did not speak to Brown after four o'clock. I did not hear him speak to any one. I can't remember about it.

I can't tell whether Brown sung out about any light. I heard some one sing out, "Hallo! what is this." At that time I had hold of the down-haul. I just had the flying jib down. While I was hauling down the flying jib I kept a lookout all the time for lights, except when I was at work. It took about a couple of minutes to haul down the flying jib. When I was hauling down the flying jib, Brown was standing away forward on the starboard side about five feet forward of the cat-heads. Before the flying jib halliards were let run the schooner
51 had luffed up some, and the main-peak was lowered. This was preparatory to anchoring. The schooner bore a weather helm in steering. The object in letting the main-peak down was to empty the wind out, so that she would come up more easily—she would not go so fast through the water. She has no boom on the jib. At the time we let the flying-jib halliards run the jib was drawing full, it had not come

inboard. The jib was sheeted flat as it could be. None of the after-sails lifted or shook before we let the flying-jib halliards run. The mainsail was flapping because the peak was lowered. At the time we slacked away the main-peak we could have carried our topsails, but we had taken them in to go into the breakwater. We were going about four or five knots through the water, I guess, before we slacked the main-peak.

When we dropped the anchor the second time, I think we were about two hundred yards off from the schooner, but I can't tell exactly. When we dropped anchor the second time the schooner had not sunk, but she was down some, she was settling forward. She was pretty near right ahead, a little on the starboard bow. When we dropped anchor the second time we had all of our sails down. She was not tailing quite as we were. The tide took her and she dipped in the water. She had settled a good deal; her forward deck was under the water. The way I noticed that she dipped was that I could see her hull. It was coming daylight, and snowing heavily then.

I think the crew from the schooner went by us the first time we anchored, but I don't remember exactly. We struck the schooner about five o'clock, I believe. I saw the schooner sink. She sunk about twenty or twenty-five minutes after we struck her, I think.

While I was hauling down the flying jib our schooner was listed a little to starboard, but not much. The down-haul of the flying jib is fastened by a pin forward through the rail, about 8 feet forward the cathead.

52 I was standing on top of the bowsprit when I had the down-haul of the flying-jib in my hand, and was hauling it down. I explain this by saying that I was not standing right on the bowsprit, but on the deck. The bowsprit was underneath me between decks. She was a two-decked schooner.

The rail forward was a tight rail, about three feet high from the deck I was standing on, and I was standing right forward amidships.

When I saw the light forward I saw it under the jib. The light was as near ahead as it could be, a little on the starboard side, but not a quarter of a point. Our outer jib was down. We struck the schooner just as we got the flying-jib fairly down.

First I heard was cracking all over. I can't tell what part of our schooner struck the other vessel first. I ran aft as fast as I could to avoid the falling spars.

Re-examined:

When we anchored the first time I think we were three of our vessel's lengths from the schooner. When we anchored the second time we had drifted a good piece from her. I do not know what time it was when we anchored the second time. It was full daylight. I could see a vessel without a light further then than when we struck the schooner. The jib was not at any time in the way so that I could not see ahead.

Recross:

When we go about the jib will go over a man's head, clear, standing on the upper deck.

Next morning after the collision I saw vessels lying to the eastward of us, about two or three hundred yards off. We had about thirty fathoms of chain out.

PONTIUS CHRISTIANSON.

Sworn to before me this 8th day of April, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

Mr. Owen reads deposition of JOHN BROWN, taken on behalf of claimants, as follows:

53 I am a seaman. Have followed the sea five years and a half. I am a Swede and live at No. 174 Water street, Brooklyn. Christianson lives with me.

I am now attached to the Clara and am going to sea in her; going to Baltimore. I joined the Clara in January last and have been in her since. I was on board the Clara at the time of the collision; was seaman. I was on the lookout at the time; had been on the lookout an hour; went there at four; I relieved Johnson; I was standing close up forward.

Q. What duties were you called upon to perform while on the lookout?

A. Nothing but lookout.

Q. Did you have anything to do with lowering any of the sails?

A. No, sir.

It was a little cloudy; good night; could see a light good; there was prospects of a storm; could not see a vessel without lights further than fifteen or twenty yards.

Q. The night was then very dark, was it?

A. Yes, sir.

Q. What kind of a lookout did you keep?

A. I kept a good lookout.

I guess I was the first one who saw the Newell; I reported her; I sung out "hallo, what is this." The first I saw of her was one of her masts; we were then about ten or fifteen yards off. We struck about eight or nine seconds after we saw her. I did not leave the place where I was standing before we struck. After we struck I saw the foretopmost coming down, and I ran aft of the foremast.

Q. When you first saw her, what lights, if any, did you see upon her?

A. I did not see any lights.

Q. If there had been a signal light upon her could you have seen it?

A. Yes, sir.

Q. Did you look for any signal lights?

A. Yes, sir.

54 Q. How often did you look at her to see if there was any light?

A. I looked at her all the time. When I first saw her, she was right ahead. Before seeing her I seen lights of vessels on the port side; I can't tell sure how far off those lights were. I did not see any lights upon any vessels on our starboard or ahead of us.

Q. Did you receive any orders in regard to keeping lookout?

A. Yes, sir.

Q. From whom and what was the order?

A. From the captain; he said to me to keep a good lookout. My eyes are good; I will be twenty-one years of age the 25th of next September.

Our vessel struck the Newell on the port side, forward of the forerigging; it was not a square blow; it was slanting forward. It did not carry away any of her masts that I know of. The Newell was lying at anchor. We remained together six, seven, or eight minutes before the vessels cleared.

Q. Did you look for a signal light on her during the time the vessels were foul; if so, state whether you saw any?

A. I did. I did not see any.

Q. Did you speak to any of your crew about the Newell's lying without a light at any time or ask them if they had seen a light?

A. Yes, sir; I told them that I could not see any light on her.

Q. Did you ask them to look if they could see any light on her?

A. Yes, sir; they looked.

Q. Was there any difficulty in seeing signal lights of vessels lying at anchor as you came in, and about how far could you see them?

A. There was no difficulty; there was nothing in the way; we could see lights, I think, about five or six hundred yards off.

55 I saw the men haul the jib down; Johnson and Christianson did it; I did not help to do it; they had got it down but had not made fast before I saw the vessel.

Q. Did the jib, before it was lowered, obstruct your view?

A. No, sir.

After we struck and I went forward again, I saw a man stick his head up out of the cabin scuttle; he was not dressed; he did not have a hat on. I did not have any conversation with him, but he sung out "what the hell are you doing." I had not seen any one on the deck before that. I had not heard any hail from the vessel.

Cross-examined:

This was my second voyage on the Clara; we had started from New York; can't recollect when we sailed; we had been out two days and one night.

Q. What time had you turned in that night?

A. Twelve o'clock; I had been on deck from eight to twelve; I was steering two hours and on the lookout two hours; the mate was on that watch with me, nobody else.

I can't remember who called me when I came up at four o'clock; I know it was four o'clock because they sang out eight bells; when I came out the schooner was going into the breakwater; I can't say how she was heading; I did not look at the compass.

She had the mainsail, foresail, jib, and flying jib; when I came on, Johnson, Christianson, captain, and mate were on deck. Christianson was at the wheel and Johnson was on lookout; the mate was going to take the wheel and I was going on the lookout, and the captain was walking forward with his glasses—marine glasses; he was forward of the traveler, abreast of the windlass, walking from one side to the other.

No one spoke to me when I came on deck; the captain gave me orders to lookout; he told me he was going into the breakwater to anchor; he told me this when I came on deck.

The captain did not speak to me after I went on lookout; he did before I went on the lookout.

56 I saw the light-houses when I came on deck. I saw three light-houses; one of them was Cape Henlopen; I also saw Cape May light; I don't know the names of the other two small lights.

Cape Henlopen light was a little on our port bow, we had not come inside of it. We were heading up the bay so as to come around inside the breakwater. We got inside the breakwater about an hour after I came on deck; I saw our people getting ready to anchor; I saw Johnson and Christianson, they were getting ready to haul down the flying-jib; they were clearing all the halyards so that the sail would run down good; there were two jibs up at that time.

Johnson got the anchor ready; that was before he went to the jib. Christianson helped him to shove it off the bow; I was about ten or twelve feet from them; they were on the port bow; I was looking out. I was on both bows; I was walking from one bow to the other; never

stopped; it was not a great distance to walk, only one or two steps and then turn around.

I had reported lights to the captain; I reported "lights on the port bow"; it was a little before they were getting the anchor ready. The captain came forward after I had reported these lights and looked and saw how they were; this was about half an hour before the collision; I can't tell sure.

The captain staid forward pretty nearly all the time after he came forward in answer to my hail of "lights on the port bow."

I did not see the mate forward; he was at the wheel; no one was fixing the anchor besides Johnson and Christianson. I can't remember who let the anchor go when we came to anchor; I did not go on board the Julia Newell; the vessels cleared themselves after the collision; no one helped. There were a good many vessels at anchor there—fifty or sixty; can't tell how far off the nearest was; there were some schooners; they had lights; they were on the port side, in the rigging, in the vessels at anchor; only on one side; bright light—anchor lamps.

57 The sails were all lowered on these schooners at anchor; I saw no sails on the Julia Newell when we struck; after we struck her and I came forward I saw a light in her cabin.

I don't know who it was that stuck his head out of the scuttle; he was the man that spoke to me; no one else spoke to me.

Our captain asked me if I saw the schooner or a light, and I told him no. That is all I can remember. We anchored close by the Newell. The flying-jib was lowered just as we struck her; we had no time to make fast the down haul; the jib was down before we struck her.

I was not watching them lower that jib. I know the down-haul was not made fast, because the jib blew up again.

I know they had changed our vessel's course from ten to fifteen minutes before the collision. Our vessel was not brought upon the wind when we lowered this jib.

It was not quite daylight when we anchored; we anchored as soon as we dropped clear of her. I can't tell how far we dropped from the Newell before we anchored; it was two or three vessel's lengths—just so we could swing clear.

The first one that spoke to me about a light on the Newell was the man I saw coming out of the cabin of the Newell. He said we knocked his light down—nothing else. I said there was no light there. I answered him that way. We had side-lights, one green and one red; they were burning. I did not look at them myself. Some one sang out to see if our side-lights were burning good, and they answered, yes, they were burning all right. I can't tell who it was answered. This was a little before the collision. I can't tell who it was sang out to ask about our lights; this was five or ten minutes before the collision. Our anchor-light had not been got up yet; I hadn't seen it. We put up an anchor-light after we came to anchor; Christianson, I believe, did it.

58 He put it in the starboard forerigging. I remained on watch till about ten or eleven o'clock that morning. We stayed there until the next afternoon, and then we sailed for Baltimore.

After the Newell was sunk we could see half of her masts and main-topmast and the end of her main boom. I can't tell what part of her rigging we carried away. When we were together our flying jibboom went between her jibstay and her foremast. We were swinging sterns together, our stern towards hers. We didn't come together; we cleared before we came together. We carried away our foretopmast and our bobstays and the cathead. I can't tell how much we cut into the New.

ell; she floated some fifteen or twenty minutes afterwards. We were anchored before she sunk. I did not see her go down.

Redirect:

Q. When you anchored could you see a vessel without lights farther than when you first saw the Newell?

A. We could see a little further; it was not quite daylight; it was getting daylight.

JOHN BROWN.

Sworn to before me April 9th, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

Mr. Owen reads deposition of NEIL JOHNSON, taken on behalf of claimants, as follows:

I am a Norwegian; my age is forty-five years. I reside at 101 West street, New York. I am now connected with the Clara, and expect to go to sea in her.

I was on the Clara at the time of the collision. I came on deck at twelve o'clock. I was in the captain's watch; my watch ended at four o'clock; during that watch I had two hours at the wheel and two look-out.

I noticed our lights; they were burning bright.

59 Brown relieved me at four o'clock; the other watch came on deck at four o'clock. After Brown relieved me I was knocking about the vessel fore and aft; it was cold.

It was a dark night.

Q. Was there any difficulty in seeing vessels without a light?

A. Oh, yes, sir; could see a vessel without a light a very short distance; it was pretty dark.

Christianson and I hauled the jib down.

When Brown sung out, "Hallo, what is this," I looked over the bow and I saw there was a vessel there; saw the mast of her; we were close up to her then; had not struck her yet; I did not see any signal on her; there was no signal light to be seen.

Q. Did you look?

A. I looked after the light, and there was none.

Q. If there had been a light there was there anything to prevent your seeing it?

A. No, sir; there was not.

At the time I first saw the Newell I was standing by the flying-jib halyards to haul the jib down. As soon as we were close up to her we could see there was a vessel's masts, and all without lights; she had no sails up.

I did not see any one on the deck of the vessel. I did not hear any hail before we struck.

We struck her just before and close up to the fore-rigging on her port side. Had seen all the lights on the port bow coming up; they were anchor lights.

Before I began to haul down the jib I had been looking out forward; did not see any light over our bow; there was no light there. There was nothing forward except what was on the port bow. After we struck the vessel, just as soon as we swung clear of her, we let the anchor go. The vessel was still afloat with her head down. I looked at her to see if there were any lights; there were none except those in the cabin window. When I was forward Brown was walking around close

60 foreward keeping lookout. After we had anchored we lifted anchor and dropped further away from her, and let the anchor go again. She was sunk when we anchored the second time. It was pretty near five o'clock when we struck her. When we first anchored we just had place to swing clear of her. When we anchored the second time we were two or three ship's lengths further off.

We bore away for the breakwater after I came on deck, after one o'clock.

Cross-examined:

The captain or the mate gave the order to let go the flying-jib; I could not tell which. When that order was given I went forward and took hold of the down-haul. Christianson was forward when that order came. I can't say exactly where the mate was; I think he was on the starboard side alongside the traveller; I heard his voice forward. I helped shove off the anchor; Christianson shoved it off, and I stood by with a shank painter to lower it down the side. The mate was standing there to stand by to answer the captain; he did not shove off the anchor. We did not let go the anchor at that time. After we shoved the anchor off we did nothing but walk around there waiting for the next order, which was, I believe, for the flying-jib to be hauled down. Only we two, Christianson and myself, hauled down the flying-jib. When we got this order to haul down the flying-jib the captain was at the wheel; I saw the captain there. I saw the steward on deck then; he was somewhere forward.

The steward had been there some time; I don't know how long. We just got the flying-jib down; we had not time to make the down-haul fast when the collision took place; we had to run. I don't know the tonnage of our schooner, and I don't know her length. She generally goes with 350 tons of coal. I had been steering before I went on the lookout. Christianson was steering when I went on the lookout.

The mate went to the wheel when Brown went on the lookout;
61 he was about three-quarters of an hour at the wheel; I can't say exactly. The captain was at the wheel when the collision occurred. I know that because I saw him there.

The flying jib was pretty nearly down when I heard Brown sing out, Hallo, what is this?

I was right amidships pulling down the flying-jib. I could see out ahead when the jib was coming down; the jibboom is raised away up and I could see clear ahead; when the flying-jib came down it came on the boom.

I did not hear any hail from the vessel we ran into. I saw her sink. We were the closest vessel to her when she sank; I could not tell how far off the nearest vessel was to her; I do not know the names of any of them.

I could see their lights; I could not tell how many; there were a great many. All the vessels I saw were inside the breakwater. It was some about five o'clock when we came to anchor; I could not say. We had a bell on board; it was not struck regularly; only when we shift watches; four bells, eight, &c.

NEIL JOHNSON.

Sworn to before me this 9th day of April, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

Mr. Owen reads deposition of SILAS W. CRANMER, taken on behalf of claimants, as follows:

I am a seafaring man; have followed the sea for eighteen years; have been mate for the last twelve years.

I know the schooner Clara; I was attached to her in February, 1874, as mate. I remember the collision between the Clara and Julia Newell, in Delaware Breakwater; it happened on the 25th of February, at 5 o'clock in the morning.

The Clara was bound from New York to Baltimore, light;
62 when we had got below the capes we bore away for the breakwater, because the weather was bad; the wind from the eastward, and it looked like storm; this was about two o'clock in the morning, I should judge.

It was my watch on deck at the time we bore away; there were six men all told on the Clara, including officers; I think Johnson was in my watch.

Q. After you bore away for the breakwater, state what occurred.

A. We bore away and went into the breakwater; the weather looked dirty—just commenced spitting snow; but it was not so but what you could see every light in the breakwater. When we got above the ice-break we jibed our mainsail and slacked our main peak; I was steering at the time; the captain was forward with his glass; every man was on deck. John Brown was on lookout; he was doing nothing else.

I was not at the wheel when the collision took place; just before the collision the captain came aft, took the wheel, and told me to go forward.

He told me to haul the main jib, and let right up and anchor; when I got there I cast the main-jib halyards off, and the man who was on the lookout sung out, "there is a schooner right under our bows." I sung out, "hard aport." I don't suppose it was a minute after this that the collision took place. I did not see any light on the other vessel until after we had struck her; I looked before we struck her to see if there was a light, but saw none. After we struck her I saw a dim light shine out of the cabin; that was all; I did not see any light at all in her rigging.

Q. If there had been a light there, could you have seen it?

A. I could have seen it.

I looked there for a light and did not see any. No one assisted me in casting the main-jib halyards; after that the men took hold of the down-haul and hauled down the main jib; all of the sailors did so.

Q. Did the man on the lookout help do it?

63 A. No, sir; he was not doing that; he was on the lookout.

The lookout was forward of the jib traveller; that was forward of where the crew were at work; he was about six or seven feet forward of me.

In coming into the breakwater I saw the lights of vessels at anchor there; we left them all on our port bow; did not see any light ahead of us; all the lights we saw we gave good berth; I never saw one on our starboard bow; a light could have been seen probably further than half a mile when we anchored.

After the collision we anchored up astern of the Julia Newell, to the westward of her; I did not see anybody on the deck of the Julia Newell before the collision; after the collision I saw one man; I saw him come out of the cabin, bareheaded; he had no coat on; he was bareheaded and in his shirt-sleeves. I saw the crew of the Julia Newell get in their boat, over the stern, and take a light in the boat, and about

ten minutes afterwards they passed us. Our captain asked them to come aboard, and they said they were going ashore; that was all they said that night; they said they could land on the beach, I think. The next morning I saw the mate of the schooner and her captain come aboard the Clara; there was another man with them; I did not have any conversation with them; the captain had some conversation with them, but what it was I don't know. When the three men came along in the boat the morning of the collision I heard one of them say that the light was burning good at ten o'clock. The conversation the next day was in the cabin of the Clara; I don't know that anybody else of our crew was present, unless it might have been the steward; the captain was there; I was not there, but was on deck.

Q. Did you have any conversation with any of these persons on the deck of the Clara?

A. No; I think not.

Q. Did you ever say to either of these persons who came aboard that you had no lookout, but that all hands were hauling down the flying-jib?

64 A. No, sir; I never did.

I was mistaken when I said it was my watch on deck; it was the captain's watch on deck when we bore away, but I was on deck all the time.

Cross-examination:

I was on deck from twelve o'clock that night until after we anchored. We were under four sail set when we bore away, the main-sail, fore-sail, main-jib, and flying-jib, that was all. We came into the breakwater to the southward of the light-ship off Cape May, with our sails on the port side until we got in above the ice-break, and then we jibed over; we slacked our main-peak before we jibed, and left it so. We were heading either south or south by east at the time of the collision, and we hit the Newell forward of the fore-rigging, a square blow. It was just about five o'clock. I went forward after we had jibed; I don't know exactly how long we ran after we jibed before I went forward. When I went forward we had the main-sail with the main-peak dropped, and the fore-sail and main-jib; the flying-jib had been taken in; the captain had taken it in before he came aft to the wheel. The first thing I did when I went forward was to cast off the halyards of the main jib, and told them to get hold of the down-haul and haul the jib down; all the crew got hold except one man, that man was the lookout. After giving that order I heard John Brown sing out a vessel ahead, right under our bow. I did not take hold of the down-haul. After hearing the hail of John Brown I sung out hard aport; the next thing was we collided with the schooner; I was standing right by the jib halyards when I heard the hail from Brown. The men had hauled the jib down. After I cast the jib-halyards off I stood by the port anchor; I had both anchors ready to let go when I went into the breakwater; there was no one with me to help cast the anchor off; did not need any help; the anchor was on the cat-head. The jib had just run down when the collision took place. All the lights we could see were on our port

65 bow at that time; there were no lights ahead or on our starboard bow. Our schooner is a two-master, and the schooner we ran into was a two-master; we were not loaded. We could see some vessels when we passed right close to them, we could see the vessels and their lights, too. I did hear a hail from the Julia Newell; the hail was, he wanted to know "What the hell we were trying to do?" I asked him "What the hell he was doing there with no light up?" That was all.

Q. Was not the name of your schooner asked?

A. Nothing at all then.

Q. When the boat came by you, after you had anchored, was there any hail from the boat?

A. There was no hail from the small boat, but there was from our captain.

Q. Was any question asked as to the name of your schooner?

A. No, I don't think there was; if there was I don't remember it.

Q. Do you not remember the man on the Julia Newell saying "You have knocked my light out"?

(Objected to.)

A. No; I don't remember anything like that.

Q. How long were your men in hauling down that jib?

A. I don't think it was over a minute; when I cast the halyards off the jib runs down of itself. The hail from John Brown came just as I had cast the halyards off.

Q. You say you looked for a light; when did you look?

A. I looked after I cast the halyards off; I looked all the time from the time I left the wheel.

Q. Did you not give any orders besides the order to lay hold of the down-haul?

A. I did not give any other order, not till I seen the vessel.

Q. How far off was the vessel when you saw her?

A. She was right under our bow.

Q. When was it you saw the light in the cabin?

66 A. After we struck her; I saw it through the skylight in the cabin; I was standing then in the same place, by the jib halyards.

We had our side-lights up and burning good when we came into the breakwater; after we dropped clear of him we took our lights down, and hung our globe lantern. These side lights were burning when we took them down. We dropped our anchor right away after we got clear of the schooner; we dropped astern of her to the westward, and four or five or six or seven lengths off. The Newell was the nearest vessel to us when we anchored. There were a good many vessels to the eastward of her; none very near her.

Redirect:

Q. Did you ever say to any of the three men who came aboard the Clara after the collision, that before the collision you looked under your mainsail and saw a red light ahead?

A. I did not.

Q. Did you ever say that to any one?

A. I did not.

Q. Did you ever say to any one that you looked under the mainsail and saw a white light ahead?

A. No, sir; I did not.

Q. Did you ever say to any one that you looked under either one of your sails and saw any light ahead?

A. No, I did not; I did not see any light ahead.

S. W. CRANMER.

Subscribed and sworn to before me this 24th day of November, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

GERRIT LIPPINCOTT recalled for claimants:

After the collision I gave the name of my vessel to the master of the Julia Newell, and also the names of the representative owners in New York and Philadelphia, and where I was bound and where I was
67 from; I told him all about it. My side lights were burning after the collision; I saw them after the collision when they were taken out of the rigging, and they were both burning brightly. Both my green and red lights were burning brightly. Sailing as I was that night, it would have been impossible to have cleared a schooner lying directly ahead of me and distant only a hundred feet. The blow was a comparatively light one; it was not a heavy blow; the shock was very light at the wheel where I stood; very light.

A. Neither my green or red light was put out by the collision.

Cross examination:

It was on the following day I gave the captain the name of my vessel. At the time I was hailed I didn't give the name as I was too confused, and didn't know what I was about. I did not see how deeply the Julia Newell was cut into by our vessel. I never before collided with any vessel, and never have been cut into myself. I don't personally know much about the effects of collisions in vessels; I have not had much experience. I never had such a misfortune except on this occasion.

Testimony closed.

Cause summed up and submitted.

United States district court.

Scudder & Carter.

JOTHAM SHEPHERD ET AL.
vs.
THE SCHOONER CLARA, HER TACKLE, ETC.

Owen & Gray.

FEBRUARY 9TH, 1875.

BENEDICT, J.:

68–75 The determination of this case depends upon the question of fact whether the libellants' vessel had at the time of the collision a proper light displayed. On this question the testimony is conflicting, but upon the whole I conclude that the weight of the evidence is with the libellants.

Let a decree, therefore, be entered in favor of the libellants with costs.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the tenth day of February, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Charles L. Benedict, district judge.

JOTHAM SHEPHERD ET AL.
vs.
THE SCHOONER CLARA, HER TACKLE, &C.

This cause having been heard upon the pleadings and proofs, and

submitted upon the arguments and briefs of the advocates for the respective parties, and due deliberation having been had thereon—

Now, on motion of Scudder & Carter, proctors for libellants, it is ordered, adjudged, and decreed that the libellants herein recover the damages by them sustained by reason of the matters alleged in the libel herein, and that the said schooner Clara, her tackle, &c., be condemned therefor.

And on like motion it is further ordered that it be referred to John J. Allen, one of the commissioners of the court, to ascertain the amount due the libellants, and report thereon to this court with all convenient speed.

CHAS. L. BENEDICT.

76 At a stated term of the district court of the United States for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the thirtieth day of December, in the year one thousand eight hundred and seventy-five.

Present, Hon. Charles L. Benedict, district judge.

JOTHAM SHEPHERD, SAMUEL E. SHEPHERD, Randall E. Jones, and Oliver P. Shepherd,
against
THE SCHOONER CLARA, HER TACKLE, APPAREL, &c.

The report of the commissioner herein having been, on the 22d day of December, 1875, presented to the court and confirmed, unless exceptions thereto be filed within four days, and the time for filing exceptions thereto having expired, and none having been filed—

On reading and filing the report of Mr. John J. Allen, United States commissioner, to whom the above matter was referred, by which there is reported due the said libellants, for the damages by them sustained by reason of the collision complained of in their libel herein, the sum of nine thousand and forty-one dollars and twenty-four cents ($9,041$\frac{24}{100}$)—

77 On motion of Scudder & Carter, proctors for the libellants, it is ordered, adjudged, and decreed that the said report be, and the same hereby is, in all things confirmed, and that the said libellants, Jotham Shepherd, Samuel E. Shepherd, Randall E. Jones, and Oliver P. Shepherd, have sustained damages by reason of the collision in the pleadings mentioned in the sum of nine thousand and forty-one dollars and twenty-four cents ($9,041$\frac{24}{100}$), and that the said schooner Clara, her tackle, apparel, and furniture, be condemned therefor.

And it appearing to the court that the claimants, Lemuel H. Hopkins Silas C. Evans, Garret Lippincott, Thomas R. Fort, Abraham Fort, John R. Inman, and Augustus M. Cox, upon the seizure of the said schooner appeared as owners thereof, and obtained the release of said schooner upon giving a stipulation for the appraised value of said schooner, the same having been appraised at the sum of seventy-five hundred dollars ($7,500.00)—

Now, on like motion, it is further ordered that Lemuel H. Hopkins, Silas C. Evans, and Edward R. Kirk, the stipulators for value herein, cause the engagements of their said stipulation to be performed, and pay into the registry of this court the amount of their said stipulation, to wit, the sum of seventy-five hundred dollars ($7,500.00) with interest thereon from the seventeenth day of March, 1874, the date thereof,

amounting to the sum of eight hundred and five dollars ($805.00), making in all the sum of eight thousand three hundred and five dollars ($8,305.00), and that said last-mentioned sum, when paid into the registry of the court, be paid to the said libellants in satisfaction of this decree.

And on like motion it is further ordered, adjudged and decreed that the said libellants recover of said claimants their costs, taxed at the sum of three hundred and fifty-three and $\frac{86}{100}$ dollars ($353.86).

And on like motion it is further ordered that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the stipulators for costs and value on the part of the claimants of said schooner cause the engagements
78 of their said stipulations to be performed, and that the libellants have execution to enforce satisfaction of this decree.

Enter.

C. L. B.

(Endorsed:) Decree. Filed and entered the 30th day of December, 1875.

Circuit court of the United States for the eastern district of New York.

THE SCHOONER CLARA, HER TACKLE, &c., Lemuel H. Hopkins, Silas C. Evans, and others, claimants and appellants, *ads.* JOTHAM SHEPHERD, SAMUEL E. SHEPHERD, Randall E. Jones, and Oliver P. Shepherd, libellants and appellees.

The petition and appeal of the above-named appellants showeth:

That on or about the 13th day of March, 1874, the above-named libellants filed their libel in the district court of the United States, for the eastern district of New York, against the schooner Clara, her tackle, apparel, &c., in a cause of collision, in which libel it is alleged, and praying as therein contained, to which said libel the petitioners refer for its contents. That thereafter, on or about the 22d day of May, 1874, the claimants having filed their claim and executed the necessary stipulations for costs and appraised value, the latter in seven thousand five hundred dollars, did file their answer alleging as therein contained and insisting that said schooner Clara was not liable for the damages claimed by said libellants, and praying that said district court
79 would pronounce against said libel and condemn the libellants in the costs, as will more fully appear on reference to said answer, and to which for the contents thereof this appellant asks leave to refer.

That thereafter said cause came on to be heard before the honorable Charles L. Benedict, judge of said district court, on the 27th and 30th days of November, 1874, upon the allegations and proofs adduced by the respective parties, and said judge having advised thereon, on or about the 9th day of February, 1875, made a decretal order or sentence bearing date that day, that the libellants recover in said action against the said schooner Clara, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned with costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages, and to report thereon to that court, as by reference to said decretal order will appear; that after proceeding with such reference before John J. Allen, esq., one of said commissioners, he made his report to said court bearing date the 22d day

of December, 1875; that thereafter on the 30th day of December, 1875, a final decree was made bearing date that day, for the recovery by said libellants against said schooner Clara, her tackle and furniture, of the sum of eight thousand three hundred and five dollars damages, as will more fully appear by reference to said decree, to which reference is had for its contents.

And these appellants are advised and insist that said decree is erroneous, inasmuch as the said libel should have been dismissed with costs, and in that if said libellants were entitled to recover damages against them, that then they were only entitled to recover the amount of the stipulation for the appraised value of said schooner given on her discharge, to wit, the sum of seven thousand five hundred dollars, and for no other or greater sum.

And these appellants for these and other reasons appeal from the whole of said decree to the next circuit court to be held in the
80 said district (and on said appeal they intend to seek a new decision on the facts on the pleadings and proofs in the district court, and other proofs to be produced in the circuit court, and to pray different relief); and they pray that the said decree and every part thereof may be reversed with costs, or such other decree thereupon made as to the said circuit court shall seem just, and the said appellees be condemned to pay to these appellants their costs and damages in the premises.

And these appellants will ever pray, &c.

Dated New York, February 12th, 1876.

OWEN & GRAY,
Proctors for Cl'ts, App'lts.

(Endorsed:) Petition and appeal. Filed February 12th, 1876.

81 *Further proofs taken in the circuit court.*

ROSCOE THURSTON, a witness on behalf of the libellants, being duly sworn, testified:

I reside in Camden, Maine; am thirty-two years of age; have followed the sea as a profession since I was ten years old; I have always sailed in fore and aft vessels; have been in all the different capacities on a vessel; have always been in the coasting trade in vessels ranging from 50 to 300 tons; have been a captain five years, in two different vessels during that time; am now in the Joe Carlton; have been in her one year; have been in the Lovett; the Lovett was sixty tons; the Carlton was ninety five tons; there was five hands in the Joe Carlton; that is the usual number of hands for vessels of that class; vessels of 100 tons carry more; I have anchored in the Delaware Breakwater
82 five or six times, in clear and foul weather, mostly foul, and have anchored other places.

Q. What is the custom on shipboard as to the keeping anchorage watch?

A. The custom is keeping a good look-out, to see that the lights don't go out and that the vessel don't get drifting; in cold weather the man is allowed to go below and keep the fire going, and the watch keeps a look-out and he goes below, and from time to time goes on deck occasionally, every four or five minutes; the same practice in stormy weather, with snow or wind; the same practice, that is my experience in all the vessels I have been in, and I have stood such watches myself in the same way exactly ever since I have been following the sea; the

breakwater is a very good anchorage; do not feel any anxiety at anchorage there; one man keeps watch from two hours to two and a half hours during the night time; the day watch is kept in the same way—two to two and a half hours, stormy weather as well; I expect to sail to-morrow.

Cross examined:

Q. The watch simply goes below to see that the fire is burning, then goes up on deck again?

A. Yes, sir; in cold weather.

Q. And you say that he goes up on deck every three or four minutes. How long does he stay on deck at a time?

A. All the way from ten minutes to half an hour.

Q. Lying in the Delaware Breakwater, with a heavy storm impending, would it be prudent for a vessel lying at anchor there for the anchor watch to remain below that long?

A. No, sir; not to remain below all of five minutes.

83 Q. Is the anchor watch's duty to hail vessels as they come in?

A. No, sir; not without there is some danger, and if there is any danger to call all hands.

Redirect examination:

Q. Where is the fire on such small coasters as you speak of?

A. In the cabin.

Q. Where is your light?

A. In the fore-rigging.

Q. Can you see the lights sitting in the cabin?

A. Yes, sir; and the lights of other vessels all around.

Q. About how many vessels have you usually found collected there?

A. All the way from twenty-five to 125. We have a forecastle on our schooner. It is customary to go in the cabin. We don't have a fire in the forecastle.

ANDREW GRAY, sworn for libellants, testified:

I reside in Maine; am a seaman by profession; have been twenty-five years; am forty-six years old; have sailed in all classes of vessels; mostly all the time in the coasting trade; am in command of a schooner now, the Trade Wind, ninety-six tons; under a hundred tons they carry about five men; smaller vessels don't carry so many. I have

84 been in the habit of anchoring in the Delaware Breakwater. I have probably anchored there 100 times, in all kinds of weather and all seasons of the year.

Q. Have you seen it crowded at times?

A. Yes, sir.

Q. What is your practice as to setting anchor watches?

A. I generally keep a watch on deck two hours to see that the light don't go out, and the vessel don't go adrift. In cold whether the watch is allowed to go below off and on; them small vessels generally have a fire in the cabin; the watch generally remains below four or five minutes; in such cases the watches are changed every two hours, in bad weather.

Q. If it is stormy you keep a watch on deck for that length of time?

A. Yes, sir; generally. I have stood such watches myself in my experience.

Cross-examined:

Q. What is the object of keeping watch?

A. For keeping the vessels from going adrift, and the lights burning, and to hail other vessels that are coming too near, when there is danger.

Q. The duty of this watchman is to be on deck except when he goes below to warm himself?

A. Yes, sir.

Q. In the port of New York, in a heavy storm, you have an anchor-watch?

A. Yes, sir.

Q. And it is usual in every other harbor?

A. Yes, sir.

85 Q. Do you think it would be proper or prudent for an anchor-watch to leave the deck and go below for a longer period than you mentioned, four or five minutes, in case of an impending storm at the breakwater?

A. I should not think it was, not longer than five minutes.

Redirect examination:

Q. In regard to this practice of the watch going below, as a matter of fact, does the watch usually stay below more than five minutes?

A. I should judge they did.

Q. Has that been your practice when you have been keeping watch?

A. It has.

Q. In case of the weather not being very threatening but promising an increase of wind, would you regard it as bad seamanship for the watch to remain below for more than five minutes?

A. I should not.

Q. As a matter of practice is it customary in such cases for the watch to remain below longer than that time?

A. I should think it was.

Recross-examination:

86 Q. Suppose the weather to be threatening such as to cause vessels at sea to seek the breakwater for shelter and safety, would it be prudent for the watch on deck, under such circumstances, to go below and remain more than five minutes?

A. Well, it would all be owing to the weather and how thick the vessels were passing about there; circumstances alter cases.

Q. Suppose at the time there should be eighty vessels anchored there, in such case would your answer be the same as to the last question?

A. Yes, sir.

Further-direct:

Q. How many vessels have you seen behind the breakwater?

A. I should judge 200.

Q. Do you know the anchorage off Lewis; up the bay, do you call that behind the breakwater?

A. That is below more than above the northwest.

Q. In case that anchorage is not crowded and the wind increasing, but not very bad, would you consider it good navigation for the watch to remain below for five minutes or over?

A. Yes, sir; I should. There is a difference in us coasting vessels standing watch, and square-rigged vessels; we are not so particular; they have more men, and the watches don't come so frequently; that is the general custom on coasting vessels.

Q. Have you ever sailed in a square-rigged vessel?

A. Yes, sir; I have.

Q. In answering these questions, in what direction do you suppose the wind to be blowing in reference to the breakwater?

87 A. I should judge an easterly storm blowing on the breakwater.

MANFORD A. DYER, sworn for libellants, testified:

I reside at South Thomaston, Maine; am 25 years old; have followed the sea since I was eight years old, in all classes of vessels, coasting vessels mostly, tonnage all the way from 50 to 1,000; have been on square rigged vessels; am in command of the "Edwin Stanley"; have been master of her four years; she is a schooner of 51 tons; I was a seaman before I was a master; have worked my way up; been through all of the different grades; have had experience in the Delaware Breakwater; frequently anchored there; usually seek it as a refuge in foul weather.

Q. In setting watches, what is the practice as to stationing any watch?

A. We have a watch stationed that the light don't go out and the vessel don't get adrift, and if there is any danger to call all hands; the watch generally stop in the cabin, and go on deck to see that the light don't go out; in cold weather they usually keep below to keep warm; we can see our light from the cabin; there is no forecastle in my vessel; the crew usually bunk together in the cabin; that is the only place where there is a fire; we cook in the cabin in the winter; we

88 have no fire in the galley in the winter; the watch is allowed to sit in the cabin and visit the deck occasionally to see that all is right; I have stood such watches in that way.

Q. What kind of a place is the Delaware Breakwater for anchorage?

A. Pretty good; perfectly safe.

Q. You have commanded some other vessel besides the Edwin Stanley?

A. I have commanded the schooner Harriet.

Q. You are going to sea on Friday?

A. Yes, sir.

Cross-examined:

I have been in the Delaware Breakwater a dozen times in all kinds of weather, stormy and pleasant, winter and summer; the anchor watch goes below in winter.

Q. Is it customary, through a heavy storm, or when a storm is impending, for the anchor watch to be below?

A. Yes, sir.

Q. Is it customary in lying in the breakwater, with a heavy storm impending, and vessels are coming in the breakwater in the dark, for the anchor watch to be below?

A. Yes, sir.

Q. Do you consider it prudent navigation of a vessel for the anchor watch to be below while the vessel is lying in the breakwater, where vessels are constantly coming in, and a heavy storm impending?

A. I do.

Q. How long have you been master of a vessel?

A. Four years.

Q. Did you ever lay in the breakwater when there was other vessels lying in there?

A. I have.

Q. Well, about how many sail—the most?

89 A. 150, say.

Q. Sitting in your cabin, how far can you see the light?

A. I can see it in the fore rigging.

Q. How far is that away?

A. About fifty feet.

Q. How do you look to see it?

A. Through windows.

Q. The windows down or up?

A. Shut.

Q. In a very cold frosty night can you see that light?

A. I can.

Q. The windows doesn't become obstructed by frost, then?

A. No, sir; when I was on anchor watch I used to go on deck every five or ten minutes.

Q. You think that is the proper way to do?

A. That is my experience.

FRANKLIN P. SHEPARD, sworn for libellants, testified:

Q. You have testified before in this case?

A. Yes, sir.

Q. Where did you have your fire on this vessel?

A. On this night in the cabin; there was no other place to keep one.

Q. You had no galley on your vessel?

A. No, sir; all bunked in the cabin, and the cabin had a skylight in the forward and the aft end.

90 Q. Sitting in the cabin can you see your light burning in the fore rigging?

A. Yes, sir.

Q. How large a schooner was she?

A. Seventy-eight tons, or thereabouts.

Q. Do you recollect about how many vessels there were lying in the Delaware Breakwater that night?

A. About sixty-five; there was none what I call near to me, I was furthermost to the west of any other; I was about half a mile off shore.

Cross-examined:

Q. What seats have you in your cabin?

A. Stools and arm chairs. The stove is in the forward end on the port side, the mouth of the stove was facing aft; I won't say positively, it was one of these regular cook-stoves.

Q. In which way do you cook?

A. I think the oven was in the front part of it; I don't remember, but I think it was aft.

Q. Did you always keep a light in the cabin?

A. Yes, generally; sitting on the table or hanging forward; there is no sofa or settee in the cabin. The cabin is about six feet high, I should judge; it just clears me standing up; I should judge the windows to be about two feet wide and eighteen inches deep; I should judge them to be about that, each of those windows, and there were two at each end; that was the only trip I was in that vessel; I have no doubt but what that was the size; I went ashore as soon as I arrived, and was ashore until after the collision.

Further direct:

Q. How high above the deck does the roof of the cabin run?

A. I should judge that the top was about 2½ feet above the poop-deck, and these lights were almost the height of the cabin above the poop-deck, just so you could put in the frame, and the bottom of the
91 light rested a little above the poop-deck, so the water would not slop in, so that the floor of the cabin was sunk from 3¼ to four feet below the level of the poop deck.

Recross-examination:

Q. Where do you hang your signal light at night?

A. In the starboard fore-rigging, unless I have sails up.

Q. How high is it from the poop-deck where the light hung?

A. Twelve or fifteen feet.

Q. How many feet was it forward of the cabin?

A. I should judge it to be fifty feet; it may have been sixty; I don't know the length of it exactly.

92 GEORGE TUPPER, a witness on behalf of the libellants, being duly sworn, testified:

I am a mariner; reside in Rockland, Maine; have followed the sea thirteen years, and have commanded a vessel about four months. Before that I was mate; have been a mate four years, and before that was in different grades; have sailed in all classes of vessels, square-rigged and coasters; the last eight years have been coasting. I command the Olive Avery now; she is a schooner of fifty-nine tons. Have anchored in the Delaware Breakwater often; never anchored there since I have been a master; have been there in all seasons of the year—summer and winter, in good and bad weather—in coasters and others. I know what the practice of setting night anchor watch is, as far as my experience goes.

Q. What is the way in which anchor watches are kept?

93 A. Well, we generally set our watches. It is according to how many men we have. On my vessel we stand three hours apiece. I tell the men to go below and see that the light is kept burning and the vessel don't drift. That is all we require of him, and if anything happens to give us a call. That is in cold weather. On the small vessels there is no protection from the weather on deck. On the general run of small coasters there is no fire kept in the house on deck; the fire is generally kept in the cabin. That has been the custom ever since I commenced going. I consider the Delaware Breakwater safe anchorage.

Q. Is it a common thing on small coasters for all hands to turn in?

A. Yes, sir.

Cross examined:

We don't always set an anchorage watch; when it is fine weather we don't; when it is stormy or blowing hard we set an anchorage watch. We set him to keep the light burning and see that the vessel don't drift.

Q. And to give notice of approaching vessels?

A. No, sir; not so much that. If they were going to run into us, why, of course, he would call; if he was on deck he would hail them.

Q. Then he could not hail them from below, in the cabin, could he?

A. No, sir; I don't suppose he could.

Q. Then they are permitted to remain the whole three hours in the cabin?

A. No, sir; they are supposed to look up once in a while, and go on

deck and see that the lights are burning. They are supposed to go on deck sometimes, once every half hour, and sometimes every five or ten minutes, according to the weather.

94 Q. Well, suppose the weather was stormy, and vessels were coming in continually, how often would he go on deck then?

A. I would not give him any specified time.

Q. How often is it his duty?

A. Every fifteen or twenty minutes, to look out and see how things were.

Q. What do they do when they are below?

A. Keep the fire going and keep warm, that is about all. If it was in the summer, they would sit there, if it was stormy, to keep out of the wet. I have not been in the breakwater in over two years. I was there at that time in the schooner "Nautilus," going out of Whywackey River, loaded with dogwood.

Q. How came you to go in there?

A. It was coming on stormy, and it was a harbor.

Q. How many vessels have you seen there at one time?

A. A hundred and fifty, I should think; I would not be certain.

Q. At any time; what other time were you there?

A. Oh, several times before that; that was the last time.

Q. Do you set and keep the anchorage watch the same in a harbor in the case of a storm as you do in the Delaware Breakwater?

A. Yes, sir; in the same way.

Q. You allow the watch to go below for a little while so long as he keeps the lights burning?

A. Yes, sir.

Q. You think he ought not in a storm to be below more than five minutes?

A. Not in stormy weather.

Q. As I understand you, then, it is customary to keep an anchorage watch in the breakwater, and also in harbors, whenever the weather is stormy or dangerous at all?

A. No, sir; we don't keep an anchorage watch in some harbors.

95 Q. In what harbors don't you keep an anchorage watch?

A. In Edgartown, Mass., we don't; I have seen about fifteen or twenty vessels there.

Q. There you don't set any anchorage watch at all?

A. No, sir; hardly every set any anchorage watch there.

Redirect:

Q. What would you think of weather in which a vessel could come in under full lower sail?

A. I should not think it was very dangerous in which a vessel could come in under full lower sail.

Recross:

Q. If If, however, the storm was approaching, such as to drive in vessels from sea, would you think it proper to have an anchorage watch?

A. No, sir; I should not. If the storm was at hand I should set a watch.

Q. When do you think a storm at hand?

A. I don't think it is at hand when a vessel could run under full sail.

DAVID KENNEDY, sworn for the libellants, testified:

I am a mariner; have followed the sea sixteen years, in all classes, coasters and square rigged vessels; have been in coasters twelve years; am now in the schooner Empress; she is a coaster; have commanded her three years; have been a master ten years; I am acquainted with the custom of standing watches in the Delaware Breakwater.

96 Q. What is the practice in respect to setting anchor watches?

A. Well, as night comes on, we set the watch according to the hands; if there is six hands, we give them two hours apiece; in bad weather we stand the watch below, but go on deck every ten or fifteen minutes to see that the light is burning, and that the vessel ain't dragging; that has been the practice ever since I can remember; it is not altogether so on large vessels; on these small vessels it is not safe to stay on deck; when we set a watch below they can see him if he is asleep or not; on those larger vessels they don't know whether the watch is in the long-boat or on watch; I have sailed in all sizes of vessels, from fifty to one hundred tons; from three to six men is the usual number of men; for a vessel under eighty tons four hands is the number.

Q. Would you consider weather that permitted the schooner to come in under full lower sails stormy or dangerous weather?

A. No, sir; I should consider that very good weather; the Delaware Breakwater is considered very good anchorage; I have been there a dozen times during the last ten years, in all kinds of weather.

Cross-examined:

Q. What hour do you generally set the anchorage watch?

A. Eight o'clock.

Q. When it is set, do you tell him he may go below and stay?

A. If the weather is bad; yes, sir.

Q. Does one of your men keep awake to see that he attends to his duty?

A. He don't on purpose.

Q. Don't the men that you have on your vessel do their duty?

97 A. They do it as long as I know it; I believe they do; if I set them on deck as a watch, I should expect them to.

Q. Where does the man sit when he goes below?

A. Well, he acts at his own pleasure; sometimes alongside the stove, and sometimes away from it. I never found one lying down.

Q. Where does the stove stand generally in the cabin of your sized vessels?

A. The stove generally stands in the forward part of the cabin, with the door facing aft; some of the stoves are about two feet across on top. The table in the cabin, as a general thing, stands in the after end of the cabin; the lamp hangs over the table.

Q. If any one was reading, they would have to sit by that table, would they not?

A. Yes, sir.

Q. When do vessels put in to the breakwater; under what circumstances?

A. Under head winds or a storm.

Q. Do they ever put in in case they see a storm approaching—that is approaching, not upon them?

A. Yes, sir; they do.

Q. They may go in, then, even though the storm has not yet broke upon them?

A. Yes, sir; very often the case when a storm is threatening.

Q. Suppose the night was dark, threatening, and stormy, how often would you require your look-out to go on deck?

A. Every fifteen or twenty minutes; I should consider that often enough.

Q. If the light went out while he was below you would be that long dark?

A. We might be probably ten minutes dark.

98 MILLER PRATT, sworn for libellants, testified:

My occupation is coasting; have been in that business about nineteen years; about seventeen years a captain; have been in all classes of vessels, from fifty to one hundred and sixty tons; am now in the E. G. Knight, 149 tons, six hands all told; I have anchored in the Delaware breakwater any quantity of times, in all seasons of the year, and in all kinds of weather; it is considered good anchorage and safe harbor.

Q. Would you consider it bad or tempestuous weather when a vessel could go in under full lower sails?

A. No, sir; I would consider that good weather.

Q. Do you know about the practice of setting anchorage watch?

A. I know my practice ever since I have been going; I know the practice in other vessels; have been in twenty-five or thirty coasters; the practice is, generally, to set the watch at eight o'clock, and it is according to how many men you have; the more men the shorter the time; the duties of the watch is to call the men, to sit down below and go up and see that the light is burning, and see that she don't drag; so long as the light burns we don't care whether any one runs into us or not; we are not going to sing out to keep off; when our light is burning it is their place to keep clear.

Q. How frequently is it the custom for the watch to visit the deck?

A. Every five or ten minutes, to see that the lights are burning; there are no houses on the decks of the small coasters; nothing more than a little galley to cook in; the light is usually hung in the forerigging; I never made particular difference which side I hung it; just as she was heading and how the wind was; the ice-breaker is not very long;
99 the breakwater is considered the longest; there is a gap between the two; the light-house is on the southerly end of it.

Q. Where is Lewes?

A. Lewes is further up the curve of the bay, Lewiston way, we generally call that behind the breakwater.

Q. That breakwater, give me some idea of that; is it a mile or a half a mile?

A. No, sir; it is not more than a quarter of a mile, and the ice-breaker is shorter yet.

Cross-examination:

Q. The gap is about between the two, what direction does it open on vessels going out to sea—that breakwater, what direction would you say?

A. It opens east-northeast.

Q. What is the width of the gap between the breakwater and the ice-breaker?

A. That is not quite as wide; that faces about the same way.

Q. What is the width of the waterway between the ice-breaker and the shore?

A. That is quite a distance; that is the biggest part of it.
Q. How far is it from the ice-breaker to Lewes?
A. Well, I should think it was a mile and a half, or more.
Q. Have you ever heard of a place called the pilot roads, there?
A. No, sir; I don't know of any such place as the pilot roads.
Q. Do you regard it as necessary always to have your anchorage watch set?
A. No, sir.
Q. Not when you are lying in the breakwater?
A. I have laid there without any, clear nights.
Q. Do you think it would be proper to lie there without any anchorage watch with a storm approaching?
100 A. No, sir.
Q. Then it is usual in such cases to have an anchorage watch?
A. Yes, sir.
Q. Would you call that bad weather when vessels are coming in to avoid a storm; don't you regard that as dangerous weather?
A. No, sir.
Q. Suppose a storm approaching be such that vessels are afraid to encounter it, and put in for safety, then would you think it necessary to have an anchorage watch?
A. Yes, sir; if it was any such weather I would.
Q. I understand you to say that you don't regard it your duty to hail an approaching vessel if you see she is likely to run into you?
A. Not if our lights are burning.
Q. Would you let her come right into you?
A. Yes, sir; if I had my lights up I would let her come right smack into me. I live in Rockland, Maine.

OLIVER P. SHEPHERD, sworn for the libellants, testifies:

I have been examinad on the trial.
Q. How long have you commanded the Julia Newell.
A. A year before she was run into; she has a poop deck that runs forward of the main mast and runs from side to side; the roof of the cabin raises about two feet above the of poop deck and runs from side to side; it is about fourteen feet long, and it is the full width of the schooner.
101 Q. Are there any lights in the sides of that cabin?
A. On the port side there is none at all; on the starboard side there is what we call a bull's-eye.
Q. Are the bunks against the sides on both sides?
A. Yes, sir; there are two lights in the forward end of the house and three in the after end, which are between the poop decks and the roof of the cabin; the Julia Newell did not look like a fisher at the time of the collision; fishers are not very often pooped; fishermen generally have a trunk cabin about two feet above the deck, and that goes down into the lower hold; I know what the custom is in settling anchorage watches.
Q. What is the custom in coasting vessels when anchoring in safe harbors?
A. If there is going to be a storm, we generally set the watch at eight o'clock, tell the lookout to see that the lights are burning, and see that the vessel don't drag; place that watch as a general thing in the cabin, that is what I generally do. I did the same in other vessels.
Q. What kind of anchorage is the Delaware breakwater?
A. It is good, except in a heavy easterly storm; then there is danger

there I consider it so in an easterly gale of wind; in other winds than that, I call it a good harbor.

Q. If a northeast storm was impending, but not at hand, would you set a watch.

A. I should set a watch and tell him if there was any change in the weather to give me a call, and to keep the light burning. I know where the pilot roads are; they are right off the town of Lewes, by the railroad wharf, it is distant some two or two and a half miles off. I have laid frequently in the Delaware breakwater in all kinds of weather and in all seasons of the year.

102 Cross-examined:

Q. What was the length of the Julia Newell?

A. I should judge somewhere about ninety feet.

Q. What is the width over all?

A. Twenty-one feet and a half, the widest place.

Q. Where does the stove stand?

A. The stove stands in the cabin; we have a partition that goes across, and in the port side of the galley the stove stands—on the port side, on the forward end of the cabin, it is partitioned off.

Q. From that partition what is the length of the cabin?

A. Eight feet.

Q. What is the width of that cabin?

A. It is in the neighborhood of six or seven feet; we have a partition on each side of the cabin, one for the men and one for the mate, and on the starboard side a pantry and in the middle is the cabin between my room and the mate's.

Q. Where does the table stand in that room?

A. In the aft end; it is three and a half feet each way, square.

Q. I understand you to say that there would be light over the table from the lights in the stern?

A. From windows in the stern of the cabin.

Q. Where are the lights in the forward part of the cabin?

A. In the forward end forward of the partition. We don't have to go out to look through those lights.

Q. How far from that partition are the lights?

A. About six feet.

Q. What sized lights are those?

A. I should judge they were somewhere about fourteen inches one way, and six the other—fourteen across and six up and down.

Q. Do those lights come down to the poop deck, from the poop deck run up?

A. These lights come as nigh as they can to the top of the cabin.

103 The lower sash of the window is above the deck, about eight inches. The partition crosses the forward end of the cabin, and runs from the floor to the ceiling. There are three doors in the forward end; one of the doors leads into my room, and the next one goes into the galley.

Q. Then if he went out of the cabin to go on deck, he goes through that door?

A. Yes, sir, he is in the door; when he goes through that door, he is in the gangway; and then he goes four steps and goes out a door that lets you out on deck.

Q. Does that door, when you go on the deck, open forward or aft?

A. Forward, sir; the doors fall outward.

Q. Now describe how a person sitting by the table in the cabin can see your schooner's light.

A. If he sits on the starboard side he can look through my door and look out and see the light any time through that window in my room.

Q. Your room is on the starboard side, and where is your window?

A. Well, I should judge it was half-way from this gangway to the outside of the house on the starboard side; it is the same sized light as I have described.

Q. Suppose the wind to be northeast, how would that range into the breakwater?

A. Well, I should judge, a northeast wind would be a little on the port bow.

Q. And such a wind would not be so safe a wind to lie there?

A. That is what I consider a dangerous storm in the breakwater.

Q. When a vessel puts into the breakwater for safety from a storm approaching or gale impending, is it or not customary in the night always to have an anchor watch?

A. Not always, sir.

Q. In what cases would you not have an anchor watch?

104 A. If it didn't blow a heavy breeze I should not set an anchorage watch. I don't think that night that she really needed an anchorage watch there, as it was described to me; I was at home in Rockport, in the State of Maine.

Redirect:

Q. When a vessel could come into the breakwater in a northeast breeze under full lower sail, would you consider it dangerous weather?

A. I would not.

105 WILLIAM POWERS, being sworn in behalf of the claimants, testified: I am twenty eight years old; live in Baltimore; not a married man; I follow the sea for a living, and have ever since I was big enough: have been employed on canal-boats to square riggers.

In February, 1874, I was attached to the N. C. Robbins as sailor; she was in oyster business, running between Virginia to New York, and from that to Baltimore.

On the night of February 24th, 1874, we were going in to the breakwater, making for a harbor; we went in there because we expected heavy weather; we were bound from York River, Virginia, to New York, before we bore away.

When we went into breakwater I was cooking supper; I was cook and steward; I shipped before the mast, but the cook was sick; I had been cook and steward ever since we left York River; I did able seaman's duties besides.

There were four all told on our schooner; we entered breakwater between seven and eight o'clock, nearer eight o'clock; I was called

106 on deck after we got in; I was called before we got in; the mate called me; I was in the galley when he called me; that is, midships between the foremast and mainmast, a small galley.

He says: "Come out, Willie, and lend us a hand; my God, we will be afoul of this schooner;" the mate was standing forward by the traveler.

I went out on deck; I went by the mate; I saw the schooner which he thought we would run into; she was near ahead of us; we were going right in for her stern; I did not see any light on that vessel except the light in the cabin; I heard our mate hail the other vessel.

Q. 1. State what he said and what answers you heard from the other vessel.

(Objected to by proctor for libellants; allowed, and libellants excepted.)

A. Our mate said to him, "What schooner is this?" he said "It is the Julia Newell;" he said "Why in hell ain't you got a light up?" he said "The damned light won't burn;" our mate hailed him two or three times before the man on this schooner answered him; it was dark and I could not see, but I think we ran so close to her that I could have jumped from our jibboom on to her quarter.

Q. Was there anything which obstructed so as to prevent your seeing a light in her rigging if she had had one?

(Objected to.)

A. No; we came to anchor in half an hour after that, I think; I could not see her after we came to anchor, as I was not looking for her; after the conversation between our mate and the man on the Julia Newell, I stood on deck until we came to anchor; after that I went and got my supper, and then came on deck again; I remained on deck until about eleven o'clock, when I went below.

Q. Did you see any light on the Julia Newell during that time?

(Objected to by counsel for libellants; allowed, and libellants excepted.)

107 A. I did not; I did not look to see; my eyes were all around the harbor; we expected we might be run down, because it was a bad, stormy night; the next morning, after it came light, I was looking around the harbor to see if there was any damages done among some that were coming in all night; I looked up toward the breakwater where the stone pile was, not far from it, and I saw the schooner sunk, a single topmast schooner [I knew it was the one that we nearly run into]. Part in brackets objected to.

Q. How did you know that it was the one you came near running into?

(Objected to.)

A. Because I did not see any other single topmast by her; I did not see any schooner close to her; she was small, lying close to the breakwater; so were we small; I did not have any conversation with any of the officers or crew of the Julia Newell.

Q. What vessel do you mean as being small in your previous answer?

A. The Julia Newell.

Cross-examined by Mr. BLACK:

I am on the Clara now; I shipped in her on Thursday last; I never saw her captain in my life till shipping master sent me aboard the vessel; the captain of the Clara is present here; I don't know his name (it is admitted that the captain is Garrett Lippincott); I was discharged from the N. C. Robbins when she got in port—in New York, on March 28, 1874; I had been on her three months; the captain was Wm. Strong; the mate was Sam. Etheridge; the other man was the steward, his name was Whitehouse; that schooner Robbins hailed from Baltimore; it was between seven and eight in the evening when I was called out of the galley first; we had just entered the harbor; we had single reefed mainsail and single reefed foresail and a bonnet on her standing jib; it was about three-quarters of an hour after I was first called
108 on deck before we got to anchor; we dropped the peak of the mainsail when we went to haul round the stone pile; that stone pile is part of the breakwater—the most westerly part—there are two

parts of it; we intended to anchor there behind the stone pile, but we couldn't get there, for this schooner; she was in the place we were going to anchor; we dropped over towards the beach, where there is an old iron dock, and anchored there; we were nearest to the westerly breakwater; there is a lighthouse on that westerly breakwater; I think we lay to the westward of that lighthouse—a little to the westward; the lighthouse is on the easterly end of the westerly breakwater; I think it is on the easterly end; I don't know much how it lays; the schooner we thought we would run into lay nearer the breakwater than we did.

Q. Which end of the westerly breakwater did the schooner you thought you were going to run into lie nearest too?

A. I couldn't say, because I don't know how it runs; I think she was closest to the end where the light-house was; I think so, but is nearly out of my recollection.

Q. When you saw her sunk the next morning how did she bear from your vessel?

A. Off my port hand off our port quarter.

Q. How did your vessel head at that time?

A. To the eastward.

Q. How far distant did she lie from you?

A. From seven to eight hundred yards; not over eight hundred yards.

Q. How far were you lying from the breakwater?

A. We were half way from the breakwater to the beach.

Q. How far were you from the breakwater?

A. I can't say; we were half way from the breakwater to the beach; I haven't been in there above a half dozen times in my life; that schooner was a single topmast schooner; there were a good
109, 110 many vessels in there—all inside the breakwater—none outside at all, only those coming in; we lay there twenty-four hours after that damage was done; I can't say what day we left; two or three years is a long time to recollect a thing; we went in there the twenty-fourth of February; I can't tell what day we sailed from York River; we had two or three spells of anchoring in harbor; we anchored all along the York River; I first heard the name of the schooner Julia Newal that night when our mate spoke her; I never heard it since then, only what I saw in the papers about her being sunk; I did not go near that schooner at all; I never told the captain of the Clara anything about it; I was laughing with the mate about it; I don't know his name.

Q. Do you know what that sunk schooner was loaded with?

A. No, sir; only what I heard say from the men.

Q. What day of the week was this time you anchored at the breakwater?

A. I couldn't say; I don't recollect the day of the week.

Q. How do you know it was February 24th you anchored there?

A. I go by my discharge and my hospital receipt; I looked at them day before yesterday; they are dated the 28th or 29th of March—something.

Q. How do you fix the 24th of February with reference to the 28th or 29th March?

A. I count back; I couldn't tell what day of the week the 28th of March came on; I don't remember the day of the week or month we arrived in New York.

111 SAMUEL M. ALDRICH, a witness on the part of the claimants, being duly sworn, testified: I am 37 years old; I reside at Sayville, Long Island; I am a seafaring man, and have followed the sea off and on for the last twenty years; I have been running along the coast considerably; I have been master of a vessel for the last five years; I have been accustomed to put into Delaware Breakwater frequently; I have been sailing-master of the schooner S. T. Robbins for the past two winters; in summers I sail with a yacht; the S. T. Robbins carries about fifty tons, and she was engaged in the oyster trade in winter; in the summer I sailed the sloop yacht Stella; I was master of her.

Q. Do you remember going into the breakwater some time in the winter of 1874–'5?

A. Yes, sir; I have sailed the sloop Charles Milton; she would carry about 30 tons, and she was also engaged in the oyster trade.

112 Q. Do you remember putting into the breakwater in the winter season at night on any occasion when you came near running into a schooner which was lying there without a light?

A. I do; I was bound from New York to Parker's Bay for a cargo of oysters; I put into the breakwater on account of a storm; the storm was then coming up from the eastward—it was a heavy storm afterwards—I don't know how long it lasted; I did not leave to go to sea for three or four days, but I left the breakwater and went to Broad Kill Creek; on this occasion I entered the breakwater between 11 and 12 o'clock at night; I entered through the West Gap; I saw vessels lying at anchor there; they were lying near the breakwater, extending about a mile or a half long; there were a good many there; they all had lights as far as I know, except one vessel; in entering I passed a vessel without a light: she was rather a small schooner, I took her to be an eastern fisherman; she had two masts, one topmast; I ran within 40 feet of her; I was steering at that time; my booms were on the starboard side; I left her on my port hand.

Q. Was there any sail or other obstruction on your vessel or elsewhere which could obstruct your view or prevent your seeing a light on that vessel from where you stood at the wheel?

(Objected to by counsel for libellants. Admitted and libellants excepted.)

A. None.

Q. Did you see any light on that vessel as you passed her?

(Objected to.)

A. No, sir; I should think I anchored about a mile and a half from her; it might not have been quite so far; I got under weigh about 8 o'clock the next morning to go to Broad Kill Creek; as I got under weigh going out I saw that a schooner had been sunk.

Q. State whether or not the schooner so sunk lay at or near the place where you passed one during the night previous without a light, as you have stated.

(Objected to as to form and substance.)

113 A. To the best of my knowledge she lay in the same track that I came when I put in.

Q. Is it or not customary for vessels putting into the breakwater during a storm to keep an anchor watch during the night?

A. It is customary; the duty of the watch is to keep the lights burning, and see that the vessel does not drag or foul other vessels.

Q. In your opinion would it be proper for an anchor watch, in case of a storm impending, as it was on the night you entered the breakwater, to sit below in the cabin instead of attending to his duty on deck.

(Objected to.)

A. It was not.

Q. Where is the light usually kept in the cabin of these small vessels?

(Objected to.)

A. I have seen them swinging hooked in the side of the cabin and standing on the table.

Q. Capt. F. P. Shepherd has testified in this case that the cabin of the Julia Newell is about 6 feet high; that the windows are in the forward and after part of the cabin, 2 feet wide and 18 inches deep, and that there are two of such windows at each end; that the roof of the cabin is about 2½ feet above the poop deck, and these lights were almost the height of the cabin above the poop deck, just so you could put in the frame, and the bottom of the light rested a little above the poop deck, so that the water could not slop in; he also says that the signal was in the starboard forerigging, about 12 or 15 feet above the poop
114 deck, and from 50 to 60 feet forward of the cabin; now state, if you please, whether in your judgment a person sitting in the cabin could see that signal light.

(Objected to.)

A. I think not; not without stooping down; I think he would have to get near the forward edge of the cabin.

Cross examined:

I am not on any vessel now; I was sailing master of the S. T. Robbins for two or three winters; E. V. Strong was master on her; she hailed from Patchogue, Long Island, and she was in the oyster trade from New York to Virginia; I do not remember who her crew was in the last voyage; she only carried four hands; I was mate of her, and besides the captain and myself there was the steward and a seaman; I put in the Delaware breakwater several times; the last time was this winter, some time before the holidays; it was in cold weather; it was storming when we went in; I was aboard the Charles Milton, I think, two winters; I was the master of her; I carried three hands, all told; I cannot tell the year I changed from the Milton to the Robbins; it was in the early part of the winter, sometime about September; I had not been in the Milton the season I went into the Robbins; I call the season of '75 '76 one year; the winter of '74 '75 two years, and the winter of '73 '75 three years; I think it was in the winter of '74 '75 that I went aboard the Robbins; I knew her ever since she was built, about 8 years; she had always been in the oyster trade; on the occasion we speak of I entered the West Gap; it is between the ice break and the main break on which the light stands; the light is on the westerly end of the main breakwater; I came in under two full sails, between 11 and 12 o'clock; it was blowing fresh, and I had a little more sail than I wanted; I didn't take in any; I was heading about south when I entered the gap, and after I went up around the fleet which were all scattered close into un-
115 der the breakwater; then I rounded up to the east; before I rounded to this single topmast schooner was the last one I passed on that course; after passing her I worked my sheets aft and hauled more to the eastward about a mile and left her on my port quarter; after that I anchored close to the stone pile; that is the breakwater on which the light is situated; as I came in through the gap, I passed the schooner without a light—I passed right under her stern, leaving her on my port hand about 40 feet; I passed to the westward of her; when I came to anchor was to the northward and eastward of her, distant, as near as I can remember, about a mile or a mile and a half; we were nearer the

breakwater; she was over a mile from the breakwater; I should think S. S. W. from the main light on the breakwater; I couldn't tell how far off shore she lay; I saw her the next morning when she was sunk; I never noticed how far off shore she lay when she was sunk; I thought nothing about it; there were quite a good many vessels that night behind the breakwater—I should think 40 or 50; I do not remember any names: I do not know whether the S. T. Robbins was there; I am quite sure she was not; we usually look for those we know; I think this schooner without a light lay a little inside of the most southerly line of the ice break, and in the range of the gap between the two, the north and the south ranges; I don't know the day of the month, nor whether it was in 1874 or 1875; I did not log it; we did not keep a log; I don't know whether this was the only sigle topmast schooner, there may have been a dozen or fifty; it is a very common rig; this looked like a fishing schooner; they have a peculiar look about them, and there are a good many in the oyster trade; I went within a half or three-quarters of a mile the next day—this is the nearest I ever went to her, except the 40 feet; this was the first time I had ever heard of her, and haven't heard of her since then until now; the town of Lewis
116 further up the bay on the shore, and bears nearly south from the breakwater; those breakwaters, I should think, are each about a half mile long; I had no anchor watch on my vessel that night; all hands turned in; I have been in the coasting business in fore-and-aft square rigged vessels, both small and large, a coasting schooner under 80 tons does not usually, in the winter season, carry more than four hands; I have been in such a schooner as mate; I have not anchored behind the breakwater in any larger than the Robbins, except the Robbins; I don't consider the breakwater safe anchorage for small boats; I did not like to turn in at the breakwater that night, but I could not do any better; that was the best harbor I could make in the night; the next day I found a better one; when I turned in that night to sleep I did not think it safe—that is, I think so now; I don't know what I thought then; I don't think it ever safe at any time for all hands to turn in and go below—we never do it on large vessels.

Q. Was there anything unusual in your all turning in that night?

A. Not aboard of her.

Q. Was that the usual way you kept anchor watches?

A. Unless it was blowing a very heavy gale of wind.

Q. Is it not the practice on small coasters to allow the watch, when at anchor in the winter season, to go below, from time to time?

(Objected to.)

A. I don't know; there is a difference in vessels; some do and some don't.

Q. What was your practice personally?

A. In anything larger than the Robbins we had no right to go below until we were relieved; I have not commanded anything larger than the Robbins except one or two trips, when I commanded vessels of about 300 tons, carrying about 7 hands.

Q. How did you know of any collision in which the Clara was involved?

117 A. In Captain Lippincott's conversation with me on last Friday at my home in Long Island; that was the first time I had ever seen Captain Lippincott.

Redirect:

Q. Have you at any time, when entering the breakwater in a storm

in the night, run so near to a vessel without a light as on this occasion?

A. Not that I remember now.

Q. Is it not of frequent occurrence that lamps well trimmed and burning will be put out by puffs of wind?

(Objected to.)

A. It is a frequent occurrence.

Q. Was the wind that night of a character likely to puff out lights?

(Objected to.)

A. I have seen them go out when there wasn't any wind.

Q. F. P. Shepherd, master of the Julia Newell, has testified that he anchored his vessel on the night of the collision about half a mile from the beach and about 1½ miles from the ice-breaker, and about 2½ miles from the breakwater, and the mate says the light on the breakwater bore about northeast from them when they anchored; please state whether that places the Newell at or about the place where the vessel lay without a light which you passed on entering.

A. From that description, it would appear to me that she lay more to the southward and eastward of the one I mentioned.

Q. About how much more to the southward and eastward should you say?

(Objected to.)

A. Well, I should say from a quarter to half a mile.

118 GARRETT LIPPINCOTT, a witness on the part of the claimants, being sworn, testified:

I have been examined before in this cause.

Q. State the circumstances under which you became acquainted with Captain Aldrich, the witness above named, and how you ascertained that he knew the facts to which he has testified.

A. On the 14th of this month I shipped a cook on board of my vessel; he asked me if this was the vessel that sunk the Julia Newell in the breakwater; I told him it was; he then said he went into the breakwater that same night between 7 and 8 o'clock; that he was on board the schooner N. C. Robbins, and told me what occurred; I produced him here and he has been examined as a witness; he informed me of an officer on the same vessel with him by the same name, which led me to make inquiries and find his address; by accident I fell in with a man named F. A. Johnson, who gave me his address, and then I went to see him; he did not prove to be the man that the cook spoke of, but in conversation he stated substantially what he has above testified to, and I asked him to come here and testify; I did not get the story from the cook before he shipped on my vessel.

Q. You've heard the testimony of Captain Aldrich in regard to his entering the breakwater and running near to a vessel without a light; state whether or not that vessel was, in your opinion, the one which the Clara collided with.

(Objected to.)

A. In my opinion it was the one.

Q. What kind of a vessel was the Julia Newell?

(Objected to.)

A. She was a two master schooner with one topmast; I never saw the vessel above water.

Q. When did the storm come on with the greatest severity?

A. About 9 o'clock on the morning of the 25th of February, 1874; it came on at about 5 a. m., and lasted with severity till about noon,

119 with snow; the storm was not increasing, but the weather was threatening.

Q. Is there any usage or custom among sailing vessels putting into the breakwater to escape a storm, to keep a watch on deck during the night?

(Objected to.)

A. There is.

Q. State what that custom is.

(Objected to.)

A. The custom is, as soon as it is dark, to set an anchor-watch, and that watch to remain on deck, and not to go below until the time of relieving that watch; the anchor-watch is relieved every two hours.

Q. State what are the duties of an anchor-watch.

(Objected to.)

A. To watch the light—keep it burning and see that the vessel don't drag, also any approaching vessel—to give the alarm as soon as possible.

Q. On the night in question was it proper for the anchor-watch of the Julia Newell to sit below, in the cabin?

(Objected to.)

A. It was not.

The question propounded to the witness Aldrich, on leaf three, being read to the witness, he is asked whether, in his judgment, a person so sitting in the cabin could see the signal-light of his vessel.

(Objected to.)

And the witness answers, "In my opinion he could not see it without stooping."

Q. How; what do you mean by stooping?

A. Getting down so that he could see the lights; see the angle of elevation.

Q. Is the cabin of the Clara arranged as the Newell's was arranged?

(Objected to.)

A. It is, as far as I know, in reference to the windows and the height of the cabin.

120 Q. How much would he have to stoop down to see the light?

(Objected to.)

A. If the table in the cabin of the Newell was placed where the table in my cabin is he could not see it at all; the table in my cabin is placed in the after end—extreme aft—the length of my cabin is, I think, about eighteen feet.

Q. Where do you suppose the table should stand to enable a person sitting by it to see the light while stooping down?

(Objected to.)

A. Not any aft of the centre.

Q. What makes you think that the light could not be seen without stooping down?

(Objected to.)

A. Because it is above the range of that window.

Q. Have you made any experiments on your vessel, or other vessels, to see whether the light can be seen?

(Objected to.)

A. I have.

Q. That night, can you state whether the storm tended to obscure the forward lights by snow, sleet, frost, or otherwise?

(Objected to.)

A. I should think that the snow, as it was freezing on that night, made it impossible to see through the cabin window.

Q. Did the snow that night come from a course to strike against the cabin window?

(Objected to.)

A. It did.

Q. Did you notice that the snow did obscure your windows?

A. I did not.

Cross-examined:

Q. The snow commenced a little before 5 a. m.—lightly at first
121 and then increased; the wind held steady from the eastward; heading to the eastward, the snow would strike my forward windows; my schooner is, I should think, 108 feet long; she has two masts; it is from 60 to 70 feet from my forward lights in the cabin to my foremast; I usually hang my signal-lights in the forward shrouds, 20 feet from the deck; I have no poop deck; the roof of my cabin above the deck is about two feet; the cabin is a little of six feet from the floor to the roof; standing at the forward windows I can see the light in my fore-rigging by looking closely; the reason is that you cannot see a light outside with a bright light in the cabin.

Q. Stepping back one pace from the forward light of your cabin, could you still see that signal-light in your fore-rigging?

A. I have never tried it at one pace.

Q. Well, then, at two paces?

A. I have never measured that or at two, three, four, or any number of paces or at any certain distance.

Q. In what part of your cabin was it that you made the experiment to see how you could get a view of your signal-light in the fore-rigging?

A. I couldn't say.

Q. Was the forward end or the after end?

A. I don't know as I could say.

Q. Was it anywhere in your cabin?

A. As a general thing, I have noticed, in my experience with a bright light burning in the cabin inside, you could not see one outside as distinctly as you could without any light in the cabin.

(Answer objected to as irre'ponsive, and question repeated.)

A. Yes, sir; I have never made the experiment; [not at any one time; that is my general experience.]

(Part in brackets objected to.)

Q. Sitting down in your cabin, have you not been able to see your signal-light in the fore-rigging through the forward lights?

A. I have never looked; I generally go on deck to see the lights.

122 When you came into the breakwater you had all sails set, did you not?

A. No, sir.

Q. What sails had you set?

A. Four lower sails.

Q. Full?

A. Full sail—main peak dropped.

Q. When did you drop the peak?

A. When I wore ship to enter the breakwater.

Q. In what direction had you been running, north or south?

A. I was bound south, but I was steering south-southwest, but when I bore away for the breakwater I steered northwest-by-north; I had six hands on my vessel.

123 *Findings of fact.*

U. S. circuit *circuit*, eastern district of New York.

THE SCHOONER CLARA, HER TACKLE, & L. H. Hopkins et al., claimants and appellants,
ags't
JOTHAM SHEPHERD ET AL.

1st. That a collision occurred about five o'clock a. m. of the 25th February, 1874, inside the Delaware Breakwater, between the schooners Clara and Julia Newell, whereby the latter was sunk. That the Julia Newell, a small schooner of 78 tons burden, on the afternoon of the 23rd of February, 1874, anchored within the breakwater for shelter from an approaching storm, and that the Clara, being on a voyage from New York to Baltimore, foreseeing the approaching storm, bore away for and also put into the breakwater for safety, where she arrived about five o'clock a. m. of the 25th of February, 1874, and while proceeding
124 to a suitable and proper anchorage collided with the Julia Newell. That there were then a large number of vessels in the breakwater and others were constantly arriving.

2nd. That at the time the Clara entered the breakwater the night was cold and very dark, the moon having gone down several hours before. That the Julia Newell was improperly lying without a watch on deck. That the storm was increasing and set in about the time the Clara came to anchor and was a very severe snow-storm.

3rd. If the Newell had had a sufficient watch on deck the accident might have been prevented.

4th. The Clara was well manned and had proper lights and a proper lookout.

Conclusions of law.

And upon the settlement of the bill of exceptions herein, as a
125 conclusion of law the court finds that the failure to keep a watch on the deck of the Julia Newell was the cause of the collision. And the counsel for the libellants duly excepted to such conclusion.

WARD HUNT.

126 U. S. circuit court, E. district of New York.

JOTHAM SHEPHERD ET AL., LIBELLANTS AND appellants,
vs.
THE SCHOONER CLARA, HER TACKLE, &C., claimants and appellees.

AUGUST 16TH, 1876.

HUNT, Justice:

Whether the Newell had set and burning the light required by law for a vessel at anchor is a matter of considerable doubt. The evidence is conflicting and it is quite difficult to determine what the truth is.

I do not, however, pass upon this point, as I hold that the absence of an anchor watch on the Newell is fatal to her right of recovery. On this point there is no conflict of evidence.

127 The mate of the Newell testifies that at the time of the collision

and for a considerable period before no one was upon the deck of the Newell. It was his watch, and he kept it by going on deck occasionally, but remaining the most of the time in the cabin. At the time of the shouts and clamor preceding the collision he was in the cabin reading an almanac, and no one was on the deck; when he reached the deck it was too late to avoid the catastrophe. The place of refuge sought by each of these vessels was artificial harbor, off the coast of Delaware, constructed by the United States in aid of coastwise commerce of the country. Sixty or seventy vessels had at this time put in there to avoid an impending storm. It was an inclement season of the year, the
128 month of February. The night was dark and rough and a severe snow-storm soon came on.

The Newell and the Clara had each a perfect right, as had all the other vessels to take advantage of the place of safety. It was, however, the duty of each to take the proper and customary measures for its own protection and to avoid injury to others.

As she came in, the Clara was bound to have a sufficient and careful lookout in addition to the light, required by the statute. This I think she had.

The Newell was bound to keep a head-light, and was also bound to keep a watch upon her deck. The latter duty she entirely omitted.

If her mate had been upon deck keeping a careful lookout he
129 might have seen the Clara and her lights at such distance that by hails and shouts he could have warned them of his position. If he could not have seen her light he might have heard the noise arising from lowering her sails and casting her anchors.

It is testified that the Clara could have heard a hail from the Newell at a distance of one hundred yards, and then the accident might have been avoided.

The ommission was a want of proper vigilance, and it is by no means certain that if well kept the watch would not have preserved both vessels in safety. (See Sapphire, 11 Wall., 170–1; Indiana Ab. Ad. Rep. 330, 335; Mary T. Wilder, Taney, Dec., 567; Lydia, 4 Bend., 523.)

130 The lookout of the Clara failed to discover the light of the Newell, if she had one, but the Newell might have seen her light or heard her noise, and by shouts and hails give that notice which they needed.

For this negligence I think she loses her right of recovery, and that the decree must be reversed and the libel dismissed.

WARD HUNT.

131 At a stated term of the circuit court of the United States for the eastern district of New York, in the second circuit, held at the United States court-rooms in the city of Brooklyn, on the second day of September, in the year of our Lord one thousand eight hundred and seventy-six.

Present, Hon. Ward Hunt, circuit justice.

JOTHAM SHEPHERD & ALS., APPELLEES,
vs.
THE SCHOONER CLARA, HER TACKLE, &C., LEMuel H. Hopkins & als., claimants & appellants.

This cause coming on to be heard on the pleadings and e vi dce
132 herein on the appeal in this cause, after hearing Edward H.

Owen, esqr., proctor for the claimants and appellants, and George A. Black, esqr., proctor for the appellees, and after due deliberation being had, it is now ordered, adjudged, and decreed that the decree appealed from be, and the same is hereby, reversed, and the libel herein be, and the same hereby is, dismissed with costs, and that the claimants recover their costs in the district court, taxed at one hundred and forty-six dollars and twenty-four cents, and a further sum of two hundred and sixty-four dollars and sixty-five cents for their costs in the circuit court now taxed, making in all the sum of four hundred and ten dollars and
133 eighty-nine cents, and that they have judgment therefor.

And it is further ordered that unless an appeal be taken from this decree within the time limited by law, the claimants have execution for the aforesaid sum of four hundred and ten dollars and eighty-nine cents against the said libellants and their stipulators, and that the stipulations of claimants for costs and value be cancelled.

WARD HUNT.

(Endorsed:) Final decree. Filed & entered September 2nd, 1876.

134 Circuit court of the United States for the eastern district of New York, in the second circuit.

JOTHAM SHEPHERD, SAMUEL E. SHEPHERD, Randall E. Jones, and Oliver P. Shepherd, libellants and appellants,
against
THE SCHOONER CLARA, HER TACKLE, &c., Samuel H. Hopkins, Silas C. Evans, Joseph R. Inman, Samuel S. Thorp, Frederick Muthan, Thomas R. Fort, Sarah J. Fort, Augustus M. Cox, G. Kohn, and Garrett Lippincott, claimants & appellees.

To the honorable the Supreme Court of the United States:

135 The appeal of Jotham Shepherd, Randall E. Jones, Samuel E. Shepherd, and Oliver P. Shepherd, the above-named libellants and appellants, respectfully shows:

That on the thirteenth day of March, 1874, they filed their libel in the district court of the United States for the eastern district of New York, against the schooner Clara, her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by them to their schooner Julia Newell and her cargo by collission with the said schooner Clara in the Delaware Breakwater, at the entrance of the Delaware Bay, and that the said schooner Clara was arrested upon process issued upon said libel, and was discharged on the claimants' filing their claim and entering into stipulations; and said claimants thereupon filed their answer to said libel.

136 That such proceedings were had in the said cause that on the thirtieth day of December, 1875, a final decree was made and pronounced in said cause by the said district court, wherein it was in substance adjudged that the said libelants recover against the said schooner Clara, her tackle, apparel, &c., the sum of eight thousand three hundred and five dollars damages, together with costs.

That after such final decree the said claimants of said schooner Clara appealed therefrom to the circuit court of the United States for the eastern district of New York, and the said cause was removed thereby into

the said circuit court and there tried anew; and such proceedings were had in the said circuit court that afterwards, on the 2nd day of September, 1876, the said circuit court made a final decree in the
137 said cause, whereby it was decreed that the said decree of the district court be reversed and the said libel dismissed with costs; which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Therefore these appellants appeal from the whole of said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew on the pleadings, proofs, and evidence in the said circuit court, and other proofs and evidence to be introduced in said
138 Supreme Court, and that *and that* the said decree of the said circuit court and every part thereof may be reversed, and a decree made affirming the decree of the said district court with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, Sept. 30th, 1876.

SCUDDER & CARTER,
Proctors for the Libellants & Appellants.
HENRY J. SCUDDER,
Advocate.

(Endorsed:) Petition of appeal.

Due and timely service of copy of within appeal admitted this fourth day of October, 1876.

OWEN & GRAY,
Proc'rs for Appellees.

Filed October 5th, 1876.

Bond for costs.

139 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

JOTHAM SHEPHERD, SAMUEL E. SHEPHERD, Randall E. Jones, and Oliver P. Shepherd, libellants & appellants,
vs.
THE SCHOONER CLARA, HER TACKLE, &C., Lemuel H. Hopkins, Silas C. Evans, Joseph R. Inman, Samuel S. Thorp, Frederick Muthan, Thomas R. Fort, Sarah J. Fort, Augustus M. Cox, G. Kohn, & Garrett Lippincott, claimants & appellees.

Know all men by these presents, that we, James V. Haviland, of No. 72 Woodhull street, in the city of Brooklyn, and George A. Black, of No. 351 East 20th street, in the city of New York, are held and firmly bound unto the above named Lemuel H. Hopkins and others, appellees, in the sum of six hundred and seventy-five dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we

bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the third day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas the above named libellants and appellants have prosecuted an appeal to the Supreme Court *Court* of the United States to reverse the decree rendered in the above entitled suit by circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES V. HAVILAND. [SEAL.]
GEORGE A. BLACK. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 3d day of October, 1876, before me.

EDWARD L. OWEN,
U. S. Commissioner.

140 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

James V. Haviland & George A. Black, being duly sworn, depose and say, and each for himself says, that he is worth the sum of thirteen hundred and fifty dollars over and above his just debts and liabilities.

JAMES V. HAVILAND.
GEORGE A. BLACK.

Sworn to this 3d day *day* of October, A. D. 1876, before me.

EDWARD L. OWEN,
U. S. Commissioner.

Approved Oct. 3d, 1876.

OWEN & GRAY,
Proc'rs for Ul'm'nts.

Approved Oct. 4th, 1876, by court.

CHR. L. BENEDICT.

(Indorsed:) Vol. , page . U. S. circuit court. Jotham Shepherd et al., appellants, vs. The schooner Clara, her tackle, &c. Bond for costs on appeal to Supreme Court. Scudder & Carter, appellants' proctors. Filed this 5th day of October, 1876.

141 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to one hundred and forty inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Jotham Shepherd, Samuel E. Shepard, Randall E. Jones, and Oliver P. Shepherd, libellants and appellees, vs. The Schooner Clara, her tackle, &c., Lemuel H. Hopkins, Silas C. Evans, and others, claimants and appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be

hereunto affixed at the city of Brooklyn, in said district and circuit, this day of October, A. D. 1877, and of the Independence of the said United States the 102nd.

[SEAL.] B. LINCOLN BENEDICT,
Clerk.

142 By the honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit.

To Lemuel H. Hopkins, Silas C. Evans, Joseph R. Inman, Samuel S. Thorp, Frederick Muthan, Thomas R. Fort, Sarah J. Fort, Augustus M. Cox, G. Kohn, and Garrett Lippencott, claimants of the schooner Clara, her tackle, etc.:

Whereas Jotham Shepherd, Samuel E. Shepherd, Randall E. Jones, and Oliver P. Shepherd have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Lemuel H. Hopkins, Silas C. Evans, Joseph R. Inman, Samuel S. Thorp, Frederick Muthan, Thomas R. Fort, Sarah J. Fort, Augustus M. Cox, G. Kohn, and Garrett Lippencott, against them, the said Jotham Shepherd, Samuel E. Shep-
143 herd, Randall E. Jones, and Oliver P. Shepherd, and have filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn, in the eastern district of New York, in the second circuit, the fourth day of October, in the year one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

CHR. L. BENEDICT.

(Indorsed:) U. S. Supreme Court. Jotham Shepherd et al., appellants, vs. The Schooner Clara, Lemuel H. Hopkins et al., appellees. Citation. Scudder & Carter, appellants' proctors.

Due and timely service of the within citation admitted this 4th day of October, 1876, and we waive the thirty days' notice.

OWEN & GRAY,
Proctors for Appellees.

(Indorsement on cover:) No. 331. Jotham Shepherd, Samuel E. Shepherd, Randall E. Jones, and Oliver P. Shepherd, appellants, vs. The Schooner Clara, her tackle, &c., Lemuel H. Hopkins et al., claimants. E. New York C. C. U. S. Filed 24th October, 1877.

FILED
OCT 30 1880
JAMES H. McKENNEY, CLERK

Supreme Court

OF THE UNITED STATES.

JOTHAM SHEPHERD, ET AL.,
Appellants,

vs.

THE SCHOONER "CLARA," &c.,

LEMUEL H. HOPKINS, ET AL,
Appellees.

APPELLANTS' BRIEF AND POINTS.

HENRY J. SCUDDER,
Of Counsel for Appellants.

NEW YORK:
E. WELLS SACKETT & BRO., PRINTERS AND STATIONERS,
56 AND 58 WILLIAM STREET,
1880.

Supreme Court of the United States.

JOTHAM
JONATHAN SHEPHERD *et al.*,
Appellants,

vs.

THE SCHOONER CLARA, HER TACKLE, ETC., LEMUEL H. HOPKINS *et al.*,
Appellees.

Appellants' Brief and Points.

STATEMENT.

This case grows out of a collision inside the Delaware Breakwater on the night of February 25th, 1874, between the schooner Clara under sail and the schooner Julia Newell at anchor. The schooner Newell was sunk by this collision.

The damage to the Newell was $9,041.24 (fol. 77).

The owners of the Newell libeled the Clara in the Eastern District of New York, and, upon full trial, the District Court decreed in favor of libellants. Appeal was taken from the decree of the District Court, and, upon hearing in the Circuit Court, the decree of the District Court was reversed and the libel dismissed.

The decision of the District Court is at fol. 68 of record. It turns entirely upon the question of a proper light on the Newell, and decides she had one.

The decision of the Circuit Court is at fol. 124, and the opinion of its learned Justice at fols. 127 to 131.

This latter decision turns entirely upon the question whether the Newell had a watch on deck, and decides she had none.

The conclusion of law in the Circuit Court is, that the failure to keep a watch on the deck of the Newell was the cause of the collision.

From the decree entered in the Circuit Court appeal is taken to this Court, and the appeal is supported by the exceptions to the findings of the Circuit Court.

A few facts in the case, in addition to above, are necessary.

The libellants' schooner, the Julia Newell, lay, at the time of the collision, near the village of Lewes, inside the breakwater. She was 78 tons burthen, and loaded (fols. 34, 36, 38).

The claimants' schooner Clara was 295 tons, light, and entered Delaware Bay with full lower sail, mainsail, foresail and two jibs set, ran around the breakwater, jibing as she did so, and came upon the Newell under mainsail, foresail and main jib, and flying jib being hauled down. Her speed at the collision was five knots (fols. 11, 13, 18, 57, 60). Her topsails had been taken in because it blew so hard (fol. 46).

The harbor was full of vessels (fols. 37, 124), and their lights could be seen with the naked eye a mile and a half off (fol. 13), as the master of the Clara testifies.

The collision occurred about five A. M.; the night then being dark, and weather cold and threatening. A snow storm set in about the time of the collision (second finding, fol. 124).

The District Court found that the Newell had a proper light set at the time of the collision (fol. 68).

The Circuit Court made no finding in this respect, but rested its determination solely upon the finding

that the Newell was lying without a watch on deck (fols. 124, 125).

The whole case, therefore, in its present condition, turns upon the single conclusion of law as to the watch on deck.

It is claimed by the appellants here that the learned Justice holding the Circuit erred in his conclusion that the failure to keep a watch on the deck of the Newell was the cause of the collision; and it is urged that the Clara was in fault in not seeing the light on the Newell, and in entering a harbor full of vessels in a dark and windy night with all lower sails set and at a high rate of speed.

POINTS.

I.

So far as the requirement of the statute as to setting a light while at anchor, enters into the case, the Newell was without fault. The District Court found she had, at the time of the collision, a proper light displayed, and the Circuit Court, by absence of finding upon this matter, acquiesced in and confirmed the view of the lower tribunal. The expression of doubt in the opinion of the Circuit Court is the mere continuation of the reflection of the District Judge—a reflection natural enough where conflict of testimony is found, but losing the character of serious impression, under the conviction created by careful consideration of the testimony, that the conclusion could not be affected by the original and passing doubt. This expression, therefore, has no force in the case. The Newell answered all admiralty obligations in having a proper light properly set and burning, and it was the duty of a vessel under way to avoid her. It is no excuse that the light was

not seen by the colliding vessel; but the failure to see it, when visible, is the gravest fault, for it implies the absence or absolute inefficiency of a lookout. Lights of vessels were visible on the occasion of the disaster for a mile and a half, and no reason exists for the failure to discern the light of the Newell had the lookout exercised attention. There is sufficient reason why it was not seen, and that lies in the condition of affairs on board the Clara just prior to and at the instant of striking the Newell, and to this condition is attributable the misfortune that befell the Newell.

II.

The rule is imperative that a vessel under sail and headway shall keep clear of one at anchor; and in the event of collision between vessels, where one is moving and the other still, every presumption bears against the one in motion. When, however, night sets in, and objects are obscured and perceptible at short distances only, prudence demands, and the law, in conformity to this demand, requires, that the stationary vessel should display a light in order to warn the moving one of her position. Having set a sufficient light, the anchored vessel has obeyed the law, and the presumptions in case of damage to her by a moving vessel come at once into force.

The necessity of an anchor watch when a light is set is a subject of discussion, and hence not of absolute rigor, as is the light. The anchor watch is certainly not stationed for the sole purpose of warning approaching vessels of the location of his own, for that would be to invite danger by confusion. The light is for the purpose of indicating place; and, if added to that, the law demands a human voice to ward off imminent disaster by its cries of alarm, the law should define when, how, and what utterances

are to be adopted. No anchor watch standing under the bright gleams of his light would dream of screaming to an approaching vessel until she might be so near that mischief would be unavoidable. He would look to his light, content himself in the assurance of its brilliancy, and reason like any sensible man or experienced sailor, "My light is visible for a mile and a half. The schooner bearing down upon me sees it and will in due course luff or keep away. I must not interfere with her navigation or attempt to take command of her from the deck of my vessel by shouts, or I will be blamed, as I should deserve to be, for foolish meddling." And thus he would stand, and properly stand, until the vessel occupied with taking in her head sails, and carelessly failing to observe his light, would be right aboard him. And what would his shouts be productive of then? He would simply stand a sorrowing spectator of a disaster he could not avert. And this is all there is to an anchor watch in general, and more than there could have been to one on the Newell on the cold, gusty, snowy night of Feb. 24th, when she was cut down by a schooner four times her size, and this large schooner sweeping in a dark night, under full sail, through a harbor of refuge, at a speed of 500 feet to the minute.

The Clara was speeding five knots an hour at the moment of disaster. A knot is 6,080 feet, hence she was going at something over 500 feet to the minute.

The captain of the Clara says he could have heard a hail an hundred yards or 300 feet that night. If we assume this statement to be strictly true, then he could have heard the cry from an anchor watch on the Newell 36 seconds before he struck her. His crew were occupied in taking in the flying jib. The first hail would simply have drawn attention to the Newell's light; and before, in the 36 seconds, any

intelligent action pointing to avoidance of the little schooner could possibly have been taken, collision was certain.

III.

The Newell adopted the ordinary method of maintaining an anchor watch. Not one perhaps to be commended, but nevertheless, as the testimony establishes, of general custom in cold weather in harbors of refuge like this Delaware Breakwater. This custom is to have some one of the crew awake, and going from time to time on deck and then again below for protection from the intense cold (fols. 81 to 100). The chief purpose of this watch is to see that the light remains in order, and the vessel does not drag her anchor. For what other rational purpose could it be? To require an anchor watch to guard against incoming vessels—presumed, of course, to be under intelligent control—would be to invert the rule, and impose upon the motionless vessel the duty of avoiding the one in motion.

Neither upon established principle nor upon the nature of things can this be expected; all the anchor watch can or should do was done by the one on the Newell, *viz.*, to see that his light was properly displayed and his vessel held by her anchor.

This case presents no such prudential requirements as are found where vessels are anchored so near to each other that swinging may occasion harm, or where a vessel from necessity is forced to anchor in a channel-way through which others are constantly, and of right, passing.

Instances of this latter character occur, and then common sense dictates unusual caution, and for the reason that the situation is unusual. In this breakwater harbor there was room enough, and especially in that part of it where the Newell was lying. She

was apart from other vessels and there was ample space for the Clara to seek anchorage without running over her to reach it.

The Clara's fault was in her lookout. He was either concerned in the operation of taking in the flying jib, or so engaged by it that he failed to see the Newell's lights, and this occasioned the catastrophe that ensued.

IV.

If the collision was caused in whole or in part by any failure of duty or neglect of a rule by the Clara, there should be a modification of the decree of the Circuit either by full reversal or an apportionment of damages between the two vessels. The argument then narrows itself to this: was the Clara justified in colliding with a vessel properly anchored, and with a sufficient light displayed and visible over a mile away, because an anchor watch of the anchored vessel was not upon deck, but, in conformity to custom, sitting in his cabin and from time to time going on deck?

If the custom of habit of an anchor watch be entirely eliminated from the case, we are reduced to the simple inquiry whether a vessel in motion can vindicate her right to cut down an anchored vessel whose light is visible, because the latter has no anchor watch on deck.

It is submitted that no case can be cited in support of any such proposition as that involved in either of these questions. Had the learned Justice found there was no light upon the Newell, an entirely distinct line of argument would have been forced upon the libellants. He made no finding, however, upon this subject, and therefore the finding of the District Court in this respect must be regarded as the finding of the Circuit.

No Act of Congress requires an anchor watch, and no case has required it where the anchored vessel was properly located and lighted. This sort of protection comes under the general rule of discretionary provisions against accident, and is to be considered in the sense of that rule. In concluding what is best under this rule courts yield largely to experts, mariners of experience and judgment, and we derive from these the fact that the anchor watch is not to be stationed upon deck at all times, but simply to look to his light and anchor from time to time. He is not there to warn off approaching vessels, but to see that his own is becomingly regulated as to lights and anchorage. This duty was performed on the Newell. No one complains she dragged and she was found to have her light well displayed.

The cause of the collision, therefore, was not the absence of an anchor watch from her deck.

V.

The learned Justice of the Circuit Court attached to this anchor watch an importance far beyond that it could claim either from decision or practical experience. The cases cited in his opinion turn upon a double negligence—absence of lights and lookout, or absence of lookout and imprudent anchorage, so that drifting might produce collision.

If a vessel improperly anchors or improperly does any other act, she will of course be held to a higher exercise of caution than if she were in all respects regular in her proceedings. So if the Newell were improperly anchored or had no light, she might well enough be required to resort to the next best thing and station a man on deck to make a noise; but she was properly anchored and had a light. She was not in a current, nor, for that matter, in a thoroughfare, but remote from other vessels.

The following cases are cited to sustain the assignment of error in the finding of law of the Circuit Court:

Steamship Achilles, 4 L. and E. Rep., 676.
The Scioto, Dav., 359.
Sterling *vs.* J. Cushman, 3 Cliff., 636.
The Wanata, 95 N. S., 600.
The Lady Franklin, 2d Lowell, 220.
The Clara *vs.* Clarita, 23 Wall, 14.

VI.

The speed of the Clara was altogether too great to be considered prudent. The night was dark; she was entering a harbor thickly studded with anchored vessels; no emergency required the speed she was making. This rate of speed, coupled with the act of lowering the jib just as she came upon the Newell, contributed to, if it did not solely cause, the disaster. For these reasons she should be held either in whole or part.

The following cases are cited in support of this point.

Granite State, 3 Wall, 310.
J. Adams, 1 Cliff., 404.
Futer *vs.* Holly, 38 Ala., 76.
Guibert *vs.* Geo. Bell, 3 Hughes, 468.
The Master Brown, Ad., 436.
The Marcia Triton, 2 Sprague, 17.
The Neptune the Second, 1 Dod., 467.
The Earl Spencer, L. R., 4 A. and E., 431.

VII.

The decree of the Circuit Court should be reversed, and decree of District Court affirmed or decree made apportioning damages.

HENRY J. SCUDDER,
of Counsel for Appellants.

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Supreme Court of the United States.

JOTHAM SHEPHERD ET AL.,
Appellants,
vs.
THE SCHOONER "CLARA," LEMUEL H. HOPKINS ET AL.,
Appellees.

Brief and Points for Appellees.

STATEMENT.

This is an appeal by the libellants from a decree of the Circuit Court of the Eastern District of New York, reversing the decree of the District Court and dismissing the libel herein.

The libellants were owners of the schooner *Julia Newell*, and filed their libel to recover damages for the sinking of that schooner by the schooner *Clara*, while the *Clara* was coming into the Delaware Breakwater, in which the *Julia Newell* was lying at anchor. The collision occurred in the early morning of February 25, 1874.

The libel averred that the *Clara* had no lookout (fol. 3). The answer, in its first article (fol. 6), denied this, and in its sixth article averred that the *Julia Newell* was lying without any anchor watch, and without any signal light, and insisted (fol. 8) that as far as the *Clara* was concerned, the collision was inevitable and without fault on her part.

The cause being tried in the District Court, on these pleadings and on the proofs, the District Judge decreed for the libellants. His opinion is at fol. 68.

The owners of the *Clara* appealed, some new evidence was offered on both sides, and the Circuit Court reversed the decree and dismissed the libel.

The findings of the Circuit Judge are at fols. 123 to 125, and his opinion at fols. 126 to 131.

First Point.

The question to be discussed on this appeal arises on the exception of the libellants to the conclusion of law of the Circuit Judge (fol. 125).

There is but one conclusion of law and but one exception, and there is, therefore, but one question, and that a question of law, to be considered.

Second Point.

There was no error in the conclusion of law, which is excepted to.

(*a.*) The Circuit Court has found certain facts in relation to the *Clara*, viz.: that foreseeing a storm, she "put into the Delaware Breakwater for safety," and "was proceeding to a suitable and proper anchorage," when the collision occurred; that the "night was cold and very dark;" that "the *Clara* was well manned and had proper lights, and a proper lookout."

(*b.*) The court also found two facts in relation to the *Julia Newell*, viz.: (1.) That she was "improperly lying without

a watch on deck," and (2.) that "if the *Newell* had had a sufficient watch on deck the accident might have been prevented."

(*c.*) It is plain, that taking these findings as to the *Clara*, there is no fault found upon her.

But the libellant who pursues a vessel in a cause of collision must establish that she has been in fault.

"When the libellant (in a collision cause) does not establish fault in the vessel sued, such vessel must be allowed to depart from court, without being mulcted in any amount, no matter whether the court concludes that the collision was the result of inevitable accident or of some fault that is inscrutable; and that it is only where the vessel *sued is affirmatively and specifically held to be in fault*, either solely or jointly with some other vessel, that she can be condemned in any damages.

BLATCHFORD, *J.*, *The Breeze*, 6 Ben., 19.
Union S. S. Co. *vs.* N.Y. & Va. S. S. Co., 24 How, 313.
The Morning Light, 2 Wall., 556.

(*d.*) It is equally plain that, taking the facts found as to the *Julia Newell*, not only was she in fault, but if she had not committed that fault the accident might have been prevented.

(*e.*) It is the settled rule of the Admiralty, that when one of two vessels, which have been in collision, is found to have been in fault, such fault will be held to have been the cause of the collision.

The M. Dousman, Newbury, 236 (affirmed, 6 McLean, 231).
The Pennsylvania, 19 Wall., 136.
The Union S. S. Co. *vs.* N. Y. & Va. S. S. Co., 24 How., 313.

The Circuit Judge, in his conclusion of law, was only declaring again this settled rule of law.

Third Point.

The Courts of Admiralty have always held that the absence of an anchor watch on a veseel lying at anchor at night in a crowded harbor (" there were a large number of vessels in the Breakwater and others were constantly arriving." Findings fol. 124), is an act of culpable negligence which will prevent a vessel from recovering damages for a collision.

The North America, 2 N. Y. Leg. Obs., 67.
The Indiana, Abb. Adm. R., 330, 335.
Cohen vs. *Mary T. Wilder*, Taney Decis., 567.

In the above case of the *North America* (decided in June, 1842), a collision had occurred in the North river, off Castle Garden. The steamboat *North America* had come down the river and rounded to just below the barque *George Canning*, which was lying at anchor, in order to come to her berth at the foot of Courtlandt street, and while making her way thereto she came upon the barque, which " had no light suspended *and no watch on deck*, * * * and was not seen on board the steamboat until too near to avoid a collision."

Judge BETTS, in giving his opinion, says: " I have no hesi-
" tation in saying, that not only was the *George Canning* acting
" in violation of an express law in lying at her place of anchor-
" age without showing a light, but that, independent of the
" State statute, it was culpable negligence in her to remain in
" the then darkness of the night without both such light *and a*
" *watch on deck*."

In the case of the *Indiana* above cited (decided in 1848), a collision had occurred between a steamboat and a schooner on a dark night. The schooner was lying at anchor in the North river, nearly opposite Fort Lee. The steamboat was on her way down from Albany. It was alleged, on the part of the steamboat, that the schooner was lying without either a light or an anchor watch. The court, having decided that the schooner had no light (p. 335), says: " The omission of the
" libellants to maintain a *competent watch* on deck throughout
" the night is clearly proved. That was an act of *gross negli-*
" *gence on their part.* All hands on board the schooner turned in
" at about eleven o'clock in the evening. A lookout doing duty
" on deck could have secured the schooner from the accident.

"He could have given the steamboat timely warning, by hail-
"ing or waving a light. * * * These acts of omission are
"made, by the maritime law, evidence of culpable inattention
"and want of precaution, which bars the schooner of all claim
"to damages she may have suffered in consequence of the
"neglect."

In the case of the *Mary P. Wilder, supra*, the libel was filed by the owners of the barque *Phantom* against the brig *Wilder* to recover damages occasioned by a collision. The *Wilder* was lying at anchor in the night at the mouth of the Patapsco river, in the channel through which sea-going vessels have to pass in going to and from Baltimore, and such vessels frequently anchor there. The channel there is about a mile and a half wide; the night was dark, and it was impossible to see vessels at anchor without sails at a distance of 100 yards. The *Wilder* "had no light during the night, *nor any lookout.*" It was pretended that the cook had the watch on deck, but he testified that he was below. TANEY, *C. J.*, says (p. 569): "Upon
"this evidence it is too clear to be disputed that there was
"gross negligence on the part of the *Mary T. Wilder.* In the
"position in which she was anchored it was her duty to have
"shown a light during the period of darkness; *and also to have*
"*had a lookout competent to perform the duty, and who diligently*
"*performed it;* ordinary prudence required both of these pre-
"cautions, independently of any established usage on the sub-
"ject; and the omission of either was culpable negligence,
"and made the vessel liable for any damage another vessel
"might sustain, by running into her during the period of dark-
"ness, unless the colliding vessel was also in fault, and con-
"tributed to the disaster by want of care or skill on her part."

See also to the same effect

The Ferry-boat Lydia, 4 *Ben.*, 523.
The Willard Saulsbury, 1 *Lowell*, 194.
The Senator, 1 *Cal. R.*, 457.
Simpson v. *Hand*, 6 *Whart.*, 324.
The Masters & Raynor, *Brown Ad. R.*, 342.
Marsden on Collisions, page 216.
Ruckman v. *Schr. Five Boys, MSS. decision of Judge* SHIPMAN, *United States District, Court, Southern District of New York, rendered March* 20, 1863.

In this latter case the judge says: "That if a vessel will "anchor in a much frequented spot like this (Hampton Roads), "where it is morally certain other vessels will be seeking the "same shelter, she should have some one on watch to keep her "light burning."

Fourth Point.

There are some propositions in the brief of the appellants to which we will briefly advert.

(*a.*) They aver, that the Circuit Court, by failing to find on the question whether the *Julia Newell* had a proper light set at the time of the collision, "acquiesced in and confirmed the view," of the District Court, that she had a light.

No authority is cited for the proposition that absence of a finding is equal to its presence.

We should suppose that the absence of a finding on the fact in question left the case as it stood on the pleadings, with a square issue between the parties, and nothing else. If any conclusion is to be drawn from that issue, it must be adverse to the libellants, instead of favorable to them.

(*b.*) The libellants' counsel having thus assumed that the *Newell* had a proper light set at the time of the collision, proceeds to argue from this assumption that there was no proper lookout on the *Clara*, and that she was, therefore, in fault.

But the Circuit Judge has found that the *Clara had a proper lookout, and that he was vigilant and attentive.*

It would seem to require something else for the overthrow of this finding besides an inference attempted to be drawn from a groundless assumption.

It would seem more natural to argue in the opposite direction, and to say, The *Clara* had a proper lookout;

she had six men forward, one of them stationed forward on that express duty, and her master had but just before come forward and carefully scanned the horizon with a night glass, in order to see where to anchor without danger; they saw no light on this vessel, although they saw lights on other vessels at anchor. Therefore, it follows that the *Julia Newell*, from some cause or other, was not exhibiting a light.

This was exactly the line of argument pursued by the District Judge in the case of the *Sam Weller* (5 Ben., 293), and this was the conclusion which he reached.

He says:

"That the rule requiring signal lights to be displayed "is not always observed is well known. The neglect in "this respect has been made the subject of remark in "public discussion (see pp. 84 and 85 of 'Rule of the "Road at Sea,' issued by Bureau of Navigation, Navy "Department, 1868). I myself have seen instances of it, "and yet, in cases of collision before the courts, where an "absence of lights is charged, witnesses almost invariably "appear who swear that the lanterns were duly set and "burning at the collision; and the rule is invoked that "affirmative evidence of the position of affairs on their "own vessel is better than negative evidence from the "other vessel.

"But the question is not whether the lights were set "burning, but whether they were kept burning. Lights "will go out sometimes, and the occurrence pass unnoticed "for awhile by those whose whole attention is directed "ahead; *and clear evidence that a careful lookout watching "for lights could not see a vessel approaching till upon him, "and that then he saw her without lights, is certainly strong "affirmative evidence to show that no light was then burning "on the approaching vessel.* Such is the proof here. There "was such lookout on the *Sam Weller*. Other vessels with "lights were seen and avoided. This vessel was not seen "till close at hand, and when seen, no lights were to be "discovered."

Fifth Point.

The argument of the appellants seems to be briefly this: "Assuming that the *Julia Newall* had a light, and conceding that she had no anchor watch, it does not follow that the failure to keep the watch was the cause of the collision, as the Circuit Judge has found, because the watch, if there had been one, could have done nothing to prevent the collision."

1st. The assumption as to the light on the *Newell* is, as we have shown unfounded. We suppose this court will not look into the evidence for the purpose of making a finding of its own on this question.

If it should conclude to do so, however, we shall ask leave to file a supplemental brief on this question. For the evidence, as it seems to us, clearly establishes that, even if the *Julia Newell's* light was set, it was not at the time of the collision burning and visible.

2d. The finding of the Circuit Judge negatives the other fact, which is the basis of the appellants' argument, for he has found that "if the *Julia Newell* had had such a watch on deck the *accident might have been prevented.*"

3d. If it were to be treated as a new question, it is plain that such a watch might have prevented the collision. A careful anchor watch would have prevented the light from being out, if it was out, or being dim, if it was dim. Or if he saw the *Clara* coming in such a direction that the light of the *Newell* might possibly be hidden by some stay or spar, a call from him at the distance of 300 yards would have afforded ample time to have made the slight change in the course of the *Clara* which would have been sufficient to avoid the *Newell*. There was no slowness or inattention on board of her. The lookout reported the *Newell* as soon as her masts were visible. The order "hard-a-port" was given at once and the wheel was immediately put hard-a-port. The vessels struck starboard bow to port bow. It would have required but a very slight change

in the course of the *Clara* to have carried her by. A watch on the *Newell's* deck would have given the *Clara* notice of their presence in time to have cleared her.

Sixth Point.

The *Newell*, thus being found to be in fault, and no fault being found in the *Clara*, it would be incumbent on the *Newell* to show that this fault did not contribute to the collision, and this, from the nature of things, she can never do.

The Pennsylvania, supra.

The decree of the Circuit Court should therefore be affirmed, with costs.

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E. L. Owen,
Counsel for Appellees.